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IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1922.

No. 717.

AMERICAN BANK AND TRUST COMPANY ET AL.,
APPELLANTS,

versus

FEDERAL RESERVE BANK OF ATLANTA ET AL.,
APPELLEES.

BRIEF FOR APPELLANTS.

(NOTE.—The bulk of this document consists of an appendix containing parts of the record for convenient reference by the court.)

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Statement of the Case.

In the summer of 1917 Congress passed an amendment to section 13 of the Federal Reserve Act commonly referred to as the Hardwick Amendment. Prior to that time there was no provision for the relation of State banks with the Federal Reserve System except through membership—a situation with which the non-member banks were well content, and anxious to maintain. This amendment provided for a voluntary rela-

tion between non-member banks and Federal Reserve banks for the purposes of exchange and collection only, to be effected by the non-member banks keeping deposits with the Federal Reserve banks and maintaining balances sufficient in amount to cover all cash items in transit and in process of collection. The amendment expressly reserved to all banks, whether members or non-members, the right to charge for the service of transmitting proceeds of checks from one point to another, commonly called exchange. The amendment took its name from Senator Hardwick who, while the Senate had under consideration the House bill on the same subject, offered an amendment expressly reserving the right to charge exchange. The Senate and House disagreeing, the bill went to conference and, while in conference, the Governor of the Federal Reserve Board called the attention of the Chairman of the House Committee on Banking, who was one of the conferees, to a statement made by the Governor of the Federal Reserve Bank of New York that the proceeds of the sale of the first Liberty Bonds then being floated could be covered by local checks on any bank in the United States. That it was probable, if these banks availed themselves of the right to charge exchange against the United States Government, the aggregate of these charges on this issue of bonds would amount to about a million dollars. Following this information, and to save this expense to the Government, the conferees tacked onto the Hardwick amendment a final clause prohibiting exchange charges against Federal Reserve banks. The bill was finally approved in June, 1917. After considering this legislation for about a year, the Federal Reserve Board came to the conclusion that it carried a mandate to the Board to establish throughout the United States a

system of "universal par clearance." By this the Board meant that no bank anywhere in the United States, whether a member of the Federal Reserve System or associated with its clearing machinery, or entirely disconnected with it, would be permitted to charge anything for the service of transporting from one place to another funds represented by the face amount of the millions of checks in constant circulation throughout the country. Having reached this conclusion and having had repeated conferences in Washington between the governors of all the Federal Reserve banks and the Federal Reserve Board, it was determined to put into effect this scheme of universal collection of checks at par.

It will prevent confusion of thought if the distinction between clearance of checks through clearing-houses and the collection of checks drawn upon banks not members of the clearing-houses is kept clearly in mind. Under the power vested in the Board by section 16 of the Federal Reserve Act it established a Gold Settlement Fund operated under the supervision of the Board and kept in Washington as a medium for the clearance of items between Federal Reserve banks. This process is clearance pure and simple. The word "clearance" can be rightly used only in connection with the liquidation, through a common center, of balances after debiting and crediting all cash items for or against common membership in the clearing-house (App., 95). Inasmuch as less than one-third of the banks of the United States are members of the Federal Reserve System, universal "clearance" of checks through that system is an impossibility. However, the word "clearance" has been erroneously applied to the collection of checks drawn on banks outside of the system, the same as to true clearance

of items between the banks who are members of the system. The establishment of "universal par clearance," therefore, necessarily involved the creation of machinery not only for *clearance* between members, already established through the Gold Settlement Fund, but for the *collection* of checks on all banks not members of the system. This was sought to be accomplished by each of the Federal Reserve banks and branches thereof undertaking to collect for any member of the system, whether in the district of the particular Reserve bank or not, any check coming into its hands, drawn on any bank outside the system. The clause tacked onto the Hardwick amendment prohibiting exchange charges against Federal Reserve banks was to be employed as a legal excuse for compelling any outside bank to remit free of charge the proceeds of checks (drawn upon it) from its own banking-house to any Federal Reserve bank. This was accomplished by the expedient of preparing and circulating to all the banks affiliated with the system a "par list" in which the names of the outside banks were listed upon whom enforced collection at par was to be brought about. By this process, practically all checks afloat throughout the United States, drawn on banks disconnected with the Federal Reserve System, that reached the hands of any bank that was a member of, or affiliated with, the system, converged and accumulated in the hands of the Federal Reserve bank of the district in which the drawee banks were located. The first step in the process was to lay before the outside banks the alleged advantages of affiliation with the Federal Reserve banks' collection system and solicit voluntary acquiescence in rendering the free service involved. After a limited amount of educational effort and solicitation, any bank that still re-

fused to render this service without compensation was placed upon the par list and when its checks were, through this instrumentality, assembled in the hands of the Federal Reserve bank of its district, they were presented at the counter of the bank and payment thereof demanded in cash. That this irregular method of collecting bank checks, as between banks, was employed consciously for the purpose of coercing submission to the demands of the Federal Reserve banks was freely admitted, and responsibility for it placed upon the Hardwick amendment. To use the language of the Governor of the Federal Reserve Board (App., 23):

> "Thus it came about that the Federal Reserve Banks found themselves in possession of checks drawn upon non-member banks which they could not send to the banks upon which the checks were drawn for the reason that those banks have declined to remit at par, and it became necessary, therefore, as the law does not provide any penalty upon non-member banks for refusing to remit at par, for the Federal Reserve banks to begin a campaign of education to induce non-member banks to remit at par, or failing this, to provide themselves with some other means of collecting checks drawn upon non-assenting banks. * * * Until the Federal Reserve Act was amended in June, 1917, the Federal Reserve banks had no mandate for undertaking to collect checks on non-member banks at par and their activities with respect to clearance were devoted mainly to the collection of checks on member banks, but after the passage of the Hardwick amendment, with the proviso above quoted, it became the duty of the Federal Reserve banks to undertake to establish a complete check clearing system, including checks drawn on non-member banks as well as on members. There were approximately

20,000 non-member banks in this country and at the time the act was amended a large majority of them were firmly committed to the policy of making an exchange or service charge for remitting for checks drawn upon them. It was clearly impracticable, *in the absence of some legislation penalizing banks* which would not remit at par, to establish a complete clearing system overnight. It was therefore determined to begin a progressive campaign of education along the line of least resistance. A large majority of the banks in New England have been for the past twenty years remitting to banks of the Boston clearing-house at par, and it was decided to establish in that district the first complete Federal Reserve clearing system. A few banks in Vermont objected, but within a few months they all came into line. The system was then extended to the New York district. In a part of that district *the opposition was more determined and it was necessary, for a while,* to make collections on some of the banks through express companies. Then the system was extended to the Philadelphia district and afterward to the Chicago, Cleveland, Kansas City, and Dallas districts as well as to certain States in other districts. It was deemed wise *not to force matters* by making collections through express companies or other agencies until non-member banks had had the whole situation fully explained to them and were given an opportunity of agreeing to make remittance at par. Then when the majority of the banks in the Federal Reserve district had so agreed, arrangements were made to collect on non-assenting banks *by means of agencies,* announcement then being made that the system was operating throughout the entire district or in particular states in the district."

The Governor then discloses pronounced opposition in Minnesota, Wisconsin, Louisiana, Mississippi, Tennessee, Alabama, Georgia, Florida, North and South Carolina. The Governor of the Federal Reserve Board then proceeds in his history of the matter as follows:

> "The Board is doing everything in its power to have the clearing system applied equally to all sections and all banks. Including member banks, there are about 30,000 banks in the United States and 27,000 of them are now (April 1, 1920) remitting at par. The 3,000 which declined to remit are making a determined effort to defeat the purpose of the Federal Reserve Act with respect to country-wide check-clearing system and unless Congress should be willing to enact some law making it decidedly to the interest of the banks to remit at par, just as in 1865, by the exercise of its taxing power, Congress made it to the interest of the State banks to retire their State bank notes, it is difficult to see how it is possible to accelerate the present rate of progress in the development of a complete nation-wide check clearing system through the Federal Reserve banks" (App., 25).

The appellants in this case are a part of the 3,000 banks making the determined effort referred to by the Governor of the Federal Reserve Board to defeat the purpose of the Federal Reserve banks to compel free service to a system with which appellants are in no manner connected. That effort culminated in filing the original bill in this case on the 15th of January, 1920. That bill set forth the campaign of the Federal Reserve System and detailed the coercive methods that have been employed by the Federal Reserve banks in

other districts beginning in Boston and sweeping westward across the country. A conspiracy is charged against defendants, acting in concert with the Federal Reserve banks in other districts under instructions of the Federal Reserve Board, to compel State banks to remit at par. Their action in filing this bill at that particular time was precipitated by the receipt from the defendant Federal Reserve bank of a form letter dated December 23 (*et seq.*), 1919, copy of which is attached as Exhibit "B" to the bill (App., 20). That letter informed appellants that in the view of the defendant bank the time had arrived for action to enforce the scheme that had been agreed upon and put into effect in the other districts. Appellants were requested to join the vast army of par-remitting banks voluntarily, but in case of refusal, they were advised by the defendant bank that it would incur any cost necessary to carry out its purposes and it would be forced to adopt other methods of collection *outside of usual banking channels* that would prove embarrassing, annoying, and expensive to appellants. Enclosed with this form letter was a copy of a letter which had been circulated by the Federal Reserve Board to all Federal Reserve banks, signed by the Governor of the Federal Reserve Board, that checks on outside banks would be collected by the Federal Reserve banks in regular banking channels if exchange charges were waived, but otherwise through some other means of collection, *no matter how expensive*. In this letter, the action of the various Federal Reserve banks extending their par list was commended by the Federal Reserve Board and the Federal Reserve banks who had been able to *"put over"* the scheme in their entire districts were particularly complimented. The Federal Reserve Board announced the policy of ultimately establish-

ing a universal or national system of clearing bank checks and drafts at par, but claimed that the one obstacle to the immediate inauguration of such a system is the ability of the small country banks to maintain balances with some city correspondent by means of which checks deposited with them will be handled at par, and through which they can remit in exchange to cover checks drawn on them through the mails; that but for this facility of doing business with institutions of their own selection, there is no doubt that many more of such banks would avail themselves of the privileges tendered by the Federal Reserve banks (App., 18).

On the trial, it developed that this form letter to the appellants was sent out pursuant to solemn resolutions of the Directors of the defendant Reserve bank hereinafter quoted in full, which recited that the Atlanta District was behind its fellows in putting this scheme into operation, and instructing the officers of the bank to adopt plans and incur all necessary expense in order to effectively arrange for the par clearance of checks received by the Atlanta bank. Many of the banks thus addressed yielded without further contest, as will appear from their letters in the record. They recognized and bowed to the power of unlimited money. But the plaintiffs, now including several hundred banks, were of the opinion that the service they were called upon to render was worth what they charged for it; that the law expressly recognized the justice of such a charge; that there was no reason for the Federal Reserve banks to handle their checks at all, and that their seeking out checks on the appellants and concentrating them in their hands through the instrumentality of the par list in order that, by this accumulation, excessive demands for currency could be made upon the banks re-

fusing to succumb, was an unwarranted and unlawful exercise of the functions of the Federal Reserve banks and would be enjoined by a court of equity.

The defendants, admitting the facts alleged in the bill and asserting their unqualified right to do the things complained of, filed a motion to dismiss in the nature of a general demurrer, which motion was granted by the United States District Court, and that decree affirmed by the Fifth Circuit Court of Appeals, and the case came into the Supreme Court of the United States and was decided on May 16, 1921 (256 U. S., 350), against the contentions of the defendants as to their unqualified right to so handle checks on non-assenting banks for the purpose of compelling this free service. Such a method of handling checks through channels wholly outside of the regular banking business and for the avowed purpose of carrying out a concerted scheme of establishing, by force if necessary, universal par clearance of checks in the United States was held to be unjustifiable warfare on these comparatively feeble competitors who, as legitimate creations of their respective States, were entitled to conduct their business as it had been formerly conducted without forcible interference by the Federal Reserve banks. Thereupon the case was remanded for trial on the facts.

Every substantial allegation of the bill has been either admitted by the answer of the defendants, or has been established by the corporate records and official documents of the defendants. Nevertheless, the trial judge found that there was no intention of coercion in any of the methods actually employed, and confess[illegible] contemplated, by the defendants and that no proof w[illegible]rthcoming that the defendants had wilfully held up presentation of checks for the

purpose of accumulating an amount of liability thereon that would embarrass the drawee banks in paying in currency the amount called for. Thereupon the injunction was denied save as to the publication on the par list of the specific name of a bank that had refused to remit at par, leaving to the defendant the right to publish to the outside world that the Federal Reserve bank would undertake the collection of all checks drawn upon *any bank in the town* where any of appellants did business. (It is obvious that the latter method is as effective in enticing into the hands of the Federal Reserve banks checks on a bank located in such town as would be the publication of the name of the bank itself.) This decree has been affirmed by the Fifth Circuit Court of Appeals and the case is again before the Supreme Court of the United States on appeal, with the whole record before it.

Notwithstanding the recognized rule that appellate courts will ordinarily decline to reverse a decree based on a question of fact, if there is any evidence to support it, appellants respectfully submit that the case at bar is not within that category. If it be admitted that there was no proof of wilful and intentional withholding presentation of checks for the purpose of embarrassing the appellant banks, it remains true that the allegations of the bill are not confined to this narrow compass. This was but one of many embarrasing, annoying and expensive methods of collection which the defendants were charged with intention of employing. The admitted result of the publication of the fact that the defendant Reserve bank would undertake the collection free of charge of all checks drawn upon any of the appellants, was the collecting together in the hands of the defendant bank of practically all checks that floated outside the places of residence

of the banks upon which drawn. This sort of accumulation swelled the amount of the demand for currency as effectually, and produced as much embarrassment, as if the checks had been withheld for presentation until such accumulation resulted. The embarrassment arose from the demand for currency continuously, day after day, as effectually as if presentation had been withheld for the purpose of increasing the amount of these demands on any given day. In other words, the law of averages, which this court has said all banks have a right to rely upon in the conduct of their business, was completely upset and the proof is undisputed (it even being admitted by Governor Wellborn of the defendant Reserve bank) that such a method of presentation and collection of checks would be so embarrassing, annoying, and expensive to the bank upon which drawn as that such a bank would be compelled, in choosing the lesser of two evils, to remit the proceeds thereof at par. This result appellants conceive to be the essence of their cause of action. The decision of this court, in this case, confirms that conception.

Defendants, however, in order to avoid the logical result of this decision have entered a formal disclaimer in their amended answer of any intention to demand currency, and of their willingness to accept in payment of checks, thus collected together and presented, a draft on the reserve deposits of the bank upon which such checks are drawn. However, they reserve the right to dictate the kind of exchange that would be acceptable, and retain discretion to decline to receive exchange and demand the currency in any particular case where, in the opinion of the agent presenting the checks, the Federal Reserve bank might incur some risk in accepting such a draft. It needs no great discernment to

discover that, through this method, intolerable embarrassment, annoyance, and expense could be inflicted. Moreover, the effect of such a method would necessarily be to deprive the drawee banks of their legitimate revenues derived from exchange, and the Governor of the Federal Reserve Board has expressed the opinion that this method would prove as coercive as the method of demanding cash only. He says (Tr., 300):

> "If it were the idea that presentation of checks by the agent for payment in cash over the counter would ultimately force a dissenting non-member bank to remit at par, it is my opinion and the opinion of others well qualified to express an opinion, that the presentation of such checks by the agent and the acceptance of a solvent check drawn by that bank on some other bank, *provided there was no exchange* charge permitted, would ultimately have the same effect. In other words, if a bank in some country town in Georgia had checks presented to it every day by a representative of the Federal Reserve bank at Atlanta and cashed them, if it is the purpose of the Atlanta bank to induce by such methods the country bank to remit at par, I think that purpose could be brought about just as effectively by instructing the agent to accept that bank's check on Atlanta as cash, because what the country bank is after is the profit on the transaction and if it does not make a profit, in course of time, it will get tired of having this person come around every day presenting these checks and having to draw a check. I do not see any distinction between the objects that the Federal Reserve banks are supposed to have in view and why one means is not just as effective as the other."

Since the avowed object of the Federal Reserve System from top to bottom is to force the establishment of "universal par clearance," the change of heart, if it be such, indicated by the modified plans set forth in the answer (filed during the progress of the trial) will leave the defendants with all the weapons necessary to accomplish their original purpose. Certainly, it will deprive plaintiffs of their legitimate service charges which are expressly safeguarded by the Hardwick amendment itself, to say nothing of the Constitution.

"You take my life when you do take the means whereby I live" (Mcht. of Venice).

Appellants will insist in the argument that the object, purposes and true meaning of the Hardwick amendment have been wholly misconceived by the Federal Reserve System and that all of this controversy springs out of that misconception.

Plaintiffs in the original bill were limited to non-member banks in the State of Georgia. In March, 1920, it was enlarged by amendment to include as a class non-member banks throughout the Sixth Federal Reserve District (Tr., 22). In January, 1922, by a second amendment it was enlarged to include as a class all non-member banks in the United States (Tr., 51). After the allowance of the first amendment many non-member banks outside of Georgia, but within the Sixth District, came into the case by intervention. After the allowance of the second amendment seven non-member banks outside the Sixth Federal Reserve District tendered an intervention praying to be made parties plaintiff, which the court refused to allow (Tr., 358).

Plaintiffs tendered in evidence some thirty sets of interrogatories disclosing the very severe methods adopted in

other districts in an effort to carry out the policy of the Federal Reserve Board to establish universal par clearance. This evidence was all rejected on the ground that it was *res inter alios acta,* and this raises a question of law that will be discussed in the argument.

Points to be Argued.

The questions before the court, therefore, resolve themselves into three general divisions:

1. WHAT IS THE TRUE INTERPRETATION OF SECTION 13 OF THE FEDERAL RESERVE ACT AS AMENDED?

2. ARE NOT ALL THE SUBSTANTIAL ALLEGATIONS OF THE BILL PROVEN BY THE UNDISPUTED EVIDENCE IN THE CASE AND THEREFORE INJUNCTION SHOULD HAVE BEEN GRANTED IN ACCORDANCE WITH THE PREVIOUS DECISION OF THE SUPREME COURT?

3. WAS NOT THE EVIDENCE OF THE ACTIVITIES OF OTHER FEDERAL RESERVE BANKS IN CARRYING OUT THE COMMON ENTERPRISE ADMISSIBLE AGAINST THESE DEFENDANTS AGAINST WHOM THE BILL WAS FILED TO *PREVENT THREATENED INJURY* BEFORE THE INJURY WAS ACTUALLY INFLICTED?

The subsidiary questions of practice spring from—

(4) ADMISSION OF THE JOINT ANSWERS OF DEFENDANTS TO INTERROGATORIES PROPOUNDED UNDER NEW EQUITY RULE 58.

(*B*) REJECTION OF THE INTERVENTION OF NON-MEMBER BANKS OUTSIDE THE SIXTH DISTRICT.

First.

WHAT IS THE TRUE INTERPRETATION OF SECTION 13 OF THE FEDERAL RESERVE ACT AS AMENDED?

(*Assignments of Error Nos. 12, 13, 18, 19, 20, 21, 22.*)

(*Tr., 481 et seq.*)

If section 13 of the Federal Reserve Act had been interpreted in accordance with the opinion of Attorney General Gregory furnished the President in March, 1918 (31 O. A. G., 245), the par-clearance campaign could not be sustained as a matter of law. If the trial court had applied the principle announced by the Supreme Court on the former appeal of this case (256 U. S., 350) the par-clearance campaign could not be sustained as a matter of fact.

That the whole controversy as to exchange charges grows out of a wrong interpretation and application of section 13 of the Federal Reserve Act is apparent from the statement of defendants' counsel in their brief in the former appeal (pp. 82 *et seq.*).

They contended then and will probably contend again that the purposes of Congress in amending section 13 was to provide for universal par clearance. Par clearance is meaningless if it does not import free service in remitting proceeds of collections. Payment for that service is called "exchange." Therefore, if it was the purpose of Congress

to provide for universal par clearance it must have intended to prohibit exchange charges. But the proviso to the section expressly recognizes and safeguards these very charges. We thus have legislative protection of exchange charges as between commercial banks and attempted prohibition of exchange charges against Federal Reserve banks—both in the same section of the law and in immediate juxtaposition. Plaintiffs contend that each provision is limited to its respective sphere. Defendants are driven to the contention that one destroys the other. Under the cardinal rules of interpretation of statutes the latter result will not be sanctioned if it can be avoided. Both provisions will be given effect if possible. Is that possible?

Look at the setting in which the legislation was passed. Section 13 of the original act (Dec. 23, 1913; 38 Stats., 263) authorized the Reserve banks to receive deposits *from member banks only,* in (1) money, (2) National Bank notes, (3) Federal Reserve notes, (4) checks on solvent members.

The same act authorized Federal Reserve banks to receive on deposit from other Federal Reserve banks, only and *solely for exchange purposes,* the same description of money and checks.

By the amendment of September 7, 1916 (39 Stats., 752), Federal Reserve banks were authorized to receive from members only (1) money, (2) National Bank notes, (3) Federal Reserve notes, and (4) checks payable on presentation *without the restriction that such checks should be drawn on solvent member banks.*

In like manner the authority to receive on deposit from other Federal Reserve banks, solely for the purposes of exchange or collection, the same description of money and

checks with the restriction that the checks enumerated must be drawn on banks *within the district of the receiving bank.* (See reprint of the section as amended, App., 82.)

Section 16 of the original act (38 Stats., 268), which has never been amended, requires Federal Reserve banks to receive on deposit at par (not for collection) from member banks checks drawn by any of the depositors in such receiving bank or from other Federal Reserve banks checks drawn by any of the depositors in such other Federal Reserve banks or by any of the depositors in the members of such other Federal Reserve banks.

> "Nothing herein contained shall be construed as prohibiting a member bank from charging its actual expense incurred in collecting and remitting funds, or for exchange sold to its patrons. The Federal Reserve Board shall, by rule, fix the charges to be collected by the member banks from its patrons whose checks are cleared through the Federal Reserve bank and the charge which may be imposed *for the service of clearing or collection rendered by the Federal Reserve bank*" (38 Stats., 268).

The Board is then authorized to regulate the transfer of funds and charges therefor among Federal Reserve banks and their branches, and may itself (the Board, not the banks) exercise the functions of a clearing-house for the Federal Reserve banks (which it has done through the Gold Settlement Fund), and may require each Reserve bank to exercise the function of a clearing-house *for its member banks.*

Between the amendment of September 7, 1916, and the Hardwick amendment of June 21, 1917 (40 Stats., 232),

war was declared by the United States against Germany. While the Hardwick amendment was under discussion in Congress the Government was aflame with war preparations including the flotation of the first Liberty bonds under the Act of April 24, 1917 (40 Stats., 35), authorizing five billions of dollars. Two billions of this authorized issue were being marketed, and the conferees on the Hardwick amendment were officially notified by the Governor of the Federal Reserve Board in a letter to Hon. Carter Glass, dated May 10, 1917, that checks of subscribers to these bonds would be drawn on local banks in an aggregate that at 10 cents per hundred dollars exchange would cost the Government approximately a million dollars (Appendix, 84). Thereupon and thereafter the attempted prohibition against charging exchange against Federal Reserve banks was added as the concluding proviso to the bill.

The Hardwick amendment added the following provisions to section 13 as amended September 7, 1916, to wit:

1. Non-member banks were authorized to participate as clearance members by becoming depositors in the Federal Reserve banks of their respective districts in an amount sufficient to offset items in transit held for their accounts by the Federal Reserve banks.

2. *Solely for the purpose of exchange or collection,* Federal Reserve banks were authorized to receive from such depositing non-member banks the same description of money and checks that they were authorized to receive from banks holding full and complete membership.

3. "That nothing in this or any other section of this (Federal Reserve) act *shall be construed as* prohibiting a

member or non-member bank from making reasonable charges, to be determined and regulated by the Federal Reserve Board, but in no case to exceed 10 cents per $100 or fraction thereof, based on the total of checks and drafts presented at any one time, *for collection or payment of checks and drafts and remission therefor by exchange or otherwise.*"

4. No such charges for collection or payment of checks and remission therefor shall be made against the Federal Reserve banks.

The result is that up to September 7, 1916, Federal Reserve banks had no authority to receive any check on any non-member bank, either on deposit or for collection. After that date it was authorized, *but not required,* to receive from members and other Reserve banks, only, checks generally that were payable on presentation, but the usual exchange charges as between banks, whether members or non-members, and whether against Reserve banks or commercial banks, were preserved without exception. On June 21, 1917, Reserve banks were authorized to receive *for the purpose of exchange or collection only* checks payable on presentation from any non-member bank in their respective districts that maintained clearance deposits with them. In connection with, and as a part of this extension of authority, the right of *members* and *non-members* to charge exchange was meticulously preserved in the original form of the amendment.

In conference, subsequent to the statement by the Governor of the Federal Reserve Board that these exchange charges on local checks of subscribers to Liberty bonds would

probably aggregate a million dollars, the last proviso was added attempting to prohibit exchange charges against Federal Reserve banks.

Congress meant by the words of this prohibition:

Either to safeguard the expenses of the Reserve banks in the exercise of these enlarged functions to undertake the collection of checks payable on presentation,

Or it intended surreptitiously and indirectly to enact a prohibition against a legitimate charge it had expressly and repeatedly recognized and safeguarded in behalf of all banks, a property right protected by the letter of the Constitution itself.

The act as amended:

Either directs the Reserve banks to so exercise *their discretionary power* to handle all checks payable on presentation as not to deplete their revenues by the payment of their funds for collection services,

Or *it requires* the Federal Reserve banks to handle not only such checks as come into their hands in regular course of business, but to go out into the highways and seek out such checks, and offer to collect them free of charge to their holders throughout the system, regardless of the expense involved in presenting them through special messengers, and paid agencies, vastly in excess of exchange charges, in case the banks on which they are drawn refuse to remit at par.

The first alternative would result in the refusal of the Reserve banks to receive checks that they have the discretion to decline to handle, because the banks on which they are drawn are entirely outside the system and beyond the jurisdiction and operation of the attempted prohibition of exchange charges, or else handle these and all other checks,

whether on members or non-members, as collecting agents for the holders, and pay the customary exchange charge for account of their principals.

The second alternative has resulted in the Reserve banks, after full conference and in full co-operation, and with the hearty approval of the Reserve Board, actively seeking to handle all kinds of checks for collection through a par list falsely representing that such checks can and will be collected at par by the Reserve banks. In the process of such collection all the coercive devices set forth in the pleadings and proof have been resorted to, to compel these outside banks to render the service, involved in transporting funds or credits, without compensation. In the Oregon case the expense of this process amounted to $3.25 per $100 collected, or more than thirty times the customary rate of exchange (281 Fed., 222). The member banks have apparently acquiesced in not charging exchange against Federal Reserve banks.

Perhaps an apology is due the court for thus thrusting before it the history of these enactments in behalf of the country banks, since it has said in this case: "We do not need aid from the debates upon the statutes under which the Reserve banks exist to assume that the United States did not intend by that statute to sanction this sort of warfare upon legitimate creations of the States" (256 U. S., 350).

All that is required to end all this litigation now pending in four judicial districts is the final statement by this court that the strained, extravagant, illogical, and unconstitutional interpretation of section 13 of the Reserve Act by defendants is not justified; is in conflict with its terms and

with the obvious economical purpose of Congress to safeguard the revenues of the Government.

It is no reply to say that plaintiff banks have no standing in court to object to the wrongful exercise by Federal Reserve banks, *in the future*, of the power to handle outside checks because they have no interest in the wrongful expenditures involved. It is well settled that if plaintiff banks will be injured by such wrongful practices they will be protected by injunction (City of Madison *v.* Madison Gas Co., 129 Wis., 249; 108 N. W., 65; 116 Am. St. Rep., 944; Attorney General *v.* R. R.'s, 35 Wis., 425; Hogan *v.* Nashville Rwy., 174 S. W., 1121; City of Alpena *v.* Kelley, 56 N. W., 941; Hardie Tynes *v.* Cruse, 66 Sou., 660; Vegetahn *v.* Guntner, 167 Mass., 62).

Cases cited to the contrary relate to executed instruments, the enforcement of which is sought to be resisted on the ground of *ultra vires*. (See cases cited by adversary counsel, National Bank *v.* Matthews, 98 U. S., 621, and Blair *v.* Chicago, 201 U. S., 400.)

Opinions of the Attorney General.

The Federal Reserve Board, followed by the Reserve banks, insist that all right to charge for the service of transporting funds through bank remittances was destroyed by the prohibition of such charges against Federal Reserve banks. In support of this position, they rely upon the letter of the Attorney General to the Governor of the Federal Reserve Board, dated April 30, 1918, with respect to the official opinion of the latter addressed to the President March 21, 1918 (31 Op. A. G., 245). The conclusion of that

official opinion was that the prohibition of these charges against Federal Reserve banks amounted to a congressional prohibition of the Federal Reserve banks paying such charges; that therefore the Reserve banks could not clear or collect checks on banks that are outside of the system and have the right to demand payment for the service of transporting funds by remittance; that because the handling of such checks by the Reserve banks was optional, not mandatory, checks on such outside banks that chose to make exchange charges could not be cleared or collected through the Federal Reserve banks. It is insisted by defendants that the Attorney General's letter of April 30 annulled this opinion. (That letter, as it appears in the Seventh Annual Report of the Federal Reserve Board, is stipulated into this record (Tr., 336) and is reproduced in full in the appendix to this brief (p. 84) for convenience of reference.)

The confusion of thought with respect to this letter of the Attorney General is due to failure to keep in mind the kind of checks he was talking about and the kind of banks upon which they were drawn. He had officially ruled on March 21, 1918, that the Reserve banks could not handle at all checks on non-member and non-par-remitting banks if exchange charges were involved. (See 31 Op. A. G., 245.) That ruling was not dealt with in the letter of April 30, 1918. The later unofficial opinion was responsive to a specific question raised by the member banks, viz., could not *member banks* charge exchange, where the checks were being handled for collection only? The Attorney General stuck to his text, and dealt with member banks only with respect to exchange charges against Reserve banks. Note his own statement of the question propounded to him: "You ask to

be advised whether the board correctly interprets my opinion (of March 21, 1918) as implying that no such distinction (between checks owned and checks received for collection) can be recognized *and that no member bank* can under any circumstances make any charge against its Federal Reserve bank in connection with the collection or payment of checks," and his answer thereto: "I construe the first paragraph of section 13 as *prohibiting member banks* under any circumstances from making the charges therein referred to against Federal Reserve banks."

We shall presently argue that this conclusion of the Attorney General in his letter of April 30, 1918, is unsound, but, certainly there is no conflict between this letter and the official opinion it refers to. The former dealt with both member banks and non-member banks. The latter deals with member banks only. The right of non-member banks to charge exchange was upheld in the original opinion, and the making of such charges by non-member banks against Federal Reserve banks was definitely held to disqualify the latter from handling checks on such non-member banks. That conclusion as to the relations between non-member banks and Federal Reserve banks was not involved in the question propounded and answered in the letter of April 30, 1918.

In dealing with the right to charge exchange, reference can be had only to such charges by the bank upon which checks are drawn. No other bank is in position to make the charges because no other bank performs the service. The situation therefore was this:

The opinion of March 21, 1918 dealt with the right of *non-member banks* to charge exchange, and that right was upheld under the provisions of the Federal Reserve Act.

The subsequent unofficial opinion dealt with the right of *member banks* to charge exchange on checks handled by the Reserve bank for collection for account of other member banks, and that right was denied under the prohibition of the last clause of section 13.

The basic error of the Federal Reserve System springs out of the contention that as to Federal Reserve banks there is no distinction between exchange charges by non-member banks, and exchange charges by member banks. As to the non-member banks, the right to make such charges is definitely reserved without qualification by the plain language of the Federal Reserve Act. As to member banks the right to make such charges is sought to be restricted to banks other than Federal Reserve banks.

Just here is the heart of the whole controversy, and when thus dissected the soundness of appellants' interpretation seems obvious.

It is submitted that under section 13 as amended Federal Reserve banks are authorized (but not required) to handle checks on non-member banks for account of members only when such handling involves no cost or expense by way of collection and remittance charges; that non-member banks have the right to collect the usual rates of exchange and may insist upon such charges against any one requiring the service involved in transferring or transporting the funds represented by the proceeds of such checks after their payment, even against Federal Reserve banks unless voluntarily waived; that the scheme of the Federal Reserve bank in seeking out checks on non-member banks who decline to waive such legitimate charges for services rendered, and undertaking the collection thereof by presentation at the

counter, regardless of expense, is not only unauthorized by the Federal Reserve Act, but is in plain violation of its express provisions prohibiting Federal Reserve banks from paying even ten cents per hundred dollars where such a charge can be and is lawfully exacted by non-member banks; that the purpose of prohibiting exchange charges against Reserve banks, if constitutional, was to conserve the expenditures of Federal Reserve banks in connection with their functions as collection agencies of their members, and that Congress by attempting to prohibit exchange charges against Federal Reserve banks cannot be convicted of the ulterior and duplicitous purpose of enabling the Reserve banks, through the operation of this prohibition, to coerce non-member State banks into par remittance and thus deprive them of legitimate revenues that could not be constitutionally taken away from them by direct legislation.

TO WHAT EXTENT CAN THE PROHIBITION AGAINST EXCHANGE CHARGES BE CONSTITUTIONALLY ENFORCED?

With great respect for the able opinions of the learned Attorney General, we submit that the provisions of the Fifth Amendment to the Constitution of the United States require an interpretation of section thirteen that will restrict the prohibition of exchange charges contained in the last clause of the Hardwick amendment not only to member banks, but to checks drawn upon and remitted for by member banks themselves that are the absolute property of the Reserve banks, *i. e.*, when not only legal title by endorsement is vested in the Reserve banks for purposes of collec-

tion but the ultimate and exclusive beneficial interest in the proceeds of such checks has been vested in the Reserve banks so that if exchange is charged it can be paid only out of the revenues of the Reserve bank, and therefore out of the revenues of the Government itself. Even this restriction of the prohibition leaves the enactment of doubtful constitutionality, because the Government itself cannot expropriate private property or private property rights without due compensation. Since, however, all the banks whether members or not, have, with commendable patriotism and public spirit, always refrained from charging exchange against the Government the enforcement of this prohibition against exchange charges where ultimate payment thereof falls on the Government (directly or indirectly) will be acquiesced in in the future as in the past.

If this prohibition of exchange charges is not thus interpreted and applied it must fail altogether because its enforcement deprives private corporations of their property without due process of law, and takes private property for private use without compensation.

National banks are deprived of a valuable property right which they had been exercising from the beginning of their corporate existence. Their membership in the Federal Reserve System is compulsory and must continue so long as they exist. Hence they are confronted with the loss either of life or of property; yet both life and property are safeguarded in the same clause of the Constitution.

This court has held in all the public utility cases that this sort of legislation cannot be constitutionally enacted, even though the deprivation springs indirectly from the inability to earn a fair return on the investment under legislative

rates. In the case at bar, the proposition is to destroy *all* rates of compensation for a transportation service that is of as distinct and well-recognized value as the transportation of persons and property. If the attempted statutory rate of ten cents the hundred dollars would be declared unconstitutional if found to be confiscatory, what are we to say of an enactment that is so interpreted as to prohibit any charge whatsoever? What can be said except that unless, by interpretation, the application of the prohibition may be so restricted as to be upheld for limited purposes, only, the whole clause must be declared unconstitutional and void? But the Federal Reserve Board replies that under section 16 the Reserve banks are required to receive on deposit *at par* all checks drawn by depositors in member banks, and under section 13 are authorized (though not required) to receive on deposit all checks payable on presentation. They contend that receiving *at par* implies a prohibition against exchange charges equivalent to the express prohibition in section 13. In the first place it may be answered that an unconstitutional law cannot be made constitutional by repetition. In the next place the requirement to receive *at par* is conditioned upon so receiving such checks *on deposit*—not for collection. Even if received on deposit, and immediate credit subject to check is allowed, the expression *at par* does not imply a prohibition against the drawee bank's charging the customary rates of exchange for remitting the proceeds. The words *at par* in this context must mean that at the time of deposit full face credit must be given, subject, however, to a countercharge against the depositing bank if the drawee bank imposes an exchange charge for its remitting service. The amount of this exchange charge, and no more, would be

debited back as a service charge incurred by the Reserve bank in clearing and collecting these checks. (See quotation from section 16, *ante;* p. 18.) So that the words *at par* in Section 16 express but one purpose viz: No Federal Reserve bank shall *deduct* in advance exchange charges at the time a check is received and credited, but the same shall be received and credited at its face value, *i. e., at par.* This interpretation is understandable and not unconstitutional.

But, the condition of receipt at par is not met under the Federal Reserve Board's regulations, viz., such checks are not received on deposit subject to check. Beginning on page 87 of the Appendix will be found Regulation J, governing the check-clearing and collection system. A careful study of this regulation will throw much light on the question now under discussion. It will be found that only deferred credit is given for the face of such checks—a mere record entry. Actual credit to the minimum reserve account subject to the checks of the depositing bank is not authorized under this regulation *until the proceeds are actually collected.* Should checks be drawn in amounts to reduce the reserve below the required minimum, such reduction is treated as an overdraft and the depositing bank is penalized by a rate of interest 2 per cent in excess of the current discount rate. (See paragraphs 3 and 7 of Reg. J., App. 87-8.)

But the whole matter is finally and fully cleared up by paragraph 9 of Regulation J (App. 89), which provides:

> "In handling items for member and clearing member banks, *a Federal Reserve bank will act as agent only.* The Board will require that each member and clearing member bank authorize its Federal Reserve

bank to send checks for collection to banks on which checks are drawn, and, except for negligence, such Federal Reserve bank *will assume no liability.*"

Also see Defendant's Bulletin, Tr., 345.

This made the Reserve banks mere naked bailees of such checks, stripped of all responsibility except for negligence. It makes the Reserve banks mere conduits between the depositing bank and the paying bank, and since 1918 all service charges by the Reserve banks have been cancelled (because their net earnings became so enormous they began charging out all possible operating expense to keep down scandal, Tr., 315), so that now the Reserve banks are not even bailees for hire with limited liability. They are naked trustees of the custody of the checks until their proceeds are received, and then the proceeds are credited to the true owner's account. Can any informed man insist that if the drawee banks deducted the customary exchange charges from the face of these checks to compensate for the service of transporting their proceeds from their counters to the Federal Reserve banks, the diminution of the proceeds thus caused would be a charge against the Federal Reserve banks? Obviously it is a charge against the depositing bank, legitimately made for a legitimate service, and falls literally, no less than equitably, within the provisos to both sections 13 and 16, expressly preserving the right of all banks, whether members or non-members, as between themselves, to charge and receive reasonable compensation (which the act seeks to limit to 10 cents per $100) for collecting and remitting the proceeds of checks. Invoking the prohibition in the final clause of the Hardwick amendment to prevent such charges on checks

thus merely passing through Federal Reserve banks as naked collection agents, serves to demonstrate the disingenuousness of the attitude of the Federal Reserve Board, speaking through its former Governor, throughout this ill-advised controversy. If the principal is subject to a charge he certainly cannot escape it by handling the transaction through an agent.

But the Attorney General, in his letter of April 30, 1918, predicates his opinion on the assumption that the checks he was dealing with were received "on deposit" and such immediate credit given as that the relation of debtor and creditor between the depositor and the bank was immediately created, and the credit immediately became subject to check. That this was the premise of the Attorney General more clearly appears by reference to the case he cites (Burton v. U. S., 196 U. S., 283), in which an indictment against Senator Burton was *nolle prossed* because he received immediate credit in Washington for certain checks payable in St. Louis and therefore the venue in Missouri of the alleged crime of *receiving money* in St. Louis for professional services against the interest of the United States while he was a United States Senator failed. He received the money in Washington and not in St. Louis because the Washington bank gave him an immediate credit subject to check when the alleged illegal checks were deposited. But even on these facts Mr. Justice Harlan dissented because the ultimate liability of Senator Burton as endorser on these checks was not discharged until actual payment of the checks in St. Louis. With its usual thoroughness this court assembled in the Burton case the pertinent authorities on this question. From these authorities it will appear that the majority opinion was based on the

absence of any agreement between Senator Burton and his Washington bank that such checks were taken for collection only. Had any such agreement appeared, either express or implied, the judgment of the court would have been exactly the opposite, *i. e.,* that Senator Burton never received the money until it was actually paid to his agent in St. Louis.

In the case at bar, all checks are required to be received by the Federal Reserve banks *for collection only,* with no responsibility except for negligence, and their proceeds not subject to check until *actually received.* It follows that the premise on which the Attorney General proceeded to his conclusion that *member banks* cannot under any circumstances charge exchange against reserve banks is entirely wanting under the actual regulations of the Reserve Board. The last prop under the position of the defendants is thus removed. See their bulletin, Tr., 345.

It is confidently insisted that even member banks can charge lawful rates of exchange for remitting proceeds of commercial checks upon them where such checks are sent to them for remittance by the Federal Reserve banks, acting, as they must, as mere collecting agents for the banks so depositing such checks for collection. Distinction between member and non-member banks would thus become unimportant.

Any other interpretation of this law not only brings it in direct conflict with the Fifth and Fourteenth amendments to the Constitution, but sanctions conduct of the Federal Reserve banks in using their own statutory exemption from exchange charges for the benefit of one member to the injury of another that might be harshly criticized. It is of a

piece with misusing the franking privilege in the United States mails for private purposes, or extending the use of a railroad pass to one not entitled to it.

The conclusion of this phase of the question is that in order to save any part of the attempted exemption of Federal Reserve banks from exchange charges it must be restricted solely to checks of the Government received on deposit for account of the Government, and subject to immediate check by the Government. A perusal of the debates in Congress discloses that this was all that it was meant to accomplish, and that its enactment was attributable solely to the then state of war and accompanying activities in raising and transporting the prodigious sums involved in that gigantic enterprise.

See the debates: Cong. Rec., 65th Cong., pp. 763, 1984, 3526, 3527-8, 3761, 3763.

Universal par clearance is impossible of accomplishment through coercion without an invasion of plaintiff's constitutional rights. It certainly cannot be made universal without coercion. The question of the constitutionality of this clause in the Hardwick amendment is squarely before the court. If held to be unconstitutional, as we think it is, the case is ended.

SECOND.

ON THE FACTS.

ALL THE SUBSTANTIAL ALLEGATIONS OF THE BILL ARE PROVEN BY THE UNDISPUTED EVIDENCE.

(*Assignments of Error Nos.* 1, 2, 3, 14, 15, 16, 17, 20, 21, 22.)

(Tr., 480 *et seq.*)

The decree finds against plaintiffs on two propositions, viz:

(*a*) That intention to withhold checks from presentation for the purpose of accumulation was not proven.

(*b*) That intention to coerce or injure plaintiff banks was not shown.

(*a*)

The effort of plaintiffs was to anticipate injury and prevent it by the remedy of injunction. This is the primary function of this extraordinary writ. Intention to accumulate checks aggregating large amounts (not the actual accumulation thereof) was but one of the charges of the bill. The method of accumulation intended is not alleged. Accumulation in aggregate amounts and collection in cash only were the deadly weapons in the warfare. Whether such accumulation resulted from withholding after receipt of the checks, or monopolizing the sources from which the checks came, and presenting them as fast as received, the aggregate amounts of cash demanded would be the same for any given period of time. The operation of the par list is shown to

result in consolidating in the hands of the Federal Reserve banks more than 90 per cent of all floating checks drawn on the bank whose name is listed thereon. Such a method of accumulation is within the allegations of the bill, and the intention to use it is officially declared by the executive officer of the defendant Reserve bank. It follows that the failure to show actual withholding presentation does not disprove intention to withhold, and does not warrant the refusal to enjoin the other methods of accumulation and the other "embarrassing, annoying, and expensive methods of collection" in contemplation of defendants when Exhibit B was written and circulated.

One of the other coercive methods referred to in paragraph 51 of the bill developed when the evidence came in, viz., checks on a non-assenting bank were sent out to its competitor in the same town to be collected at drawee's counter and remitted at par. The competitor bank had the inducement held out to it that under this arrangement it could obtain underhand information with respect to its neighbor's depositors and derive benefit from this inside information. It is creditable to the banks thus sought to be seduced into unworthy competitive methods that few, if any, of them yielded. Such an insidious attack on a non-assenting bank was not alleged specifically in the bill because plaintiffs at the time the bill was drafted had too high an opinion of defendants to have charged such a course if they had suspected it. Not until its existence appeared over the signature of Deputy Governor Adelson could plaintiffs have believed such a method was possible. (See App., pp. 31, 35, 36, 37, 38.)

But appellants insist that not only did intention to accumulate exist, but was proven to have been accomplished by

withholding presentation in at least one instance (App., 48). This fact makes applicable the principle of the case of American Steel Foundries *v.* Tri-City Central Trades Council et al., Supreme Court, 257 U. S., — (January 3, 1921), which may be paraphrased thus:

When one or more controversies or disturbances ensued, they characterized the whole campaign, which became effective because of its intimidating character, in spite of the admonitions given by the superior officers as to lawful methods to be pursued, however sincere.

The law does not look with favor on an enforced consideration of the merits of the issue between business corporations one group of which wishes to do business with another on terms not satisfactory to the latter, under conditions which subject the latter to severe tests of nerve and courage with respect to the effect on their business.

The element of intimidation involved in concentration of checks for payment in currency, and the actual injury to the business of the drawee bank, support the equitable jurisdiction and demand the injunctive relief sought.

Intention to arbitrarily place non-par banks on the par list is repeatedly stated in writing. Without this procedure the defendant bank would not receive checks on non-par banks at all. The result of the procedure was inevitable accumulation in amount of practically all checks on such non-par banks.

The plan was most effective. *Before* the name of a non-member bank appeared on this list none of its floating checks came back through the Reserve banks. *After* its name was thus circulated practically all (more than 90 per cent) (Tr., 47) of such checks converged in the Reserve bank near-

est the location of the drawee bank. The ingenuity and success of this method for "seeking out," collecting together, accumulating in amount, and assembling in a body, for presentation, all the floating checks on a non-assenting, non-par remitting, nonmember bank, challenges admiration. When thus enticed into defendant's hands the purpose to adopt methods of collecting them that would prove embarrassing, annoying and expensive to the banks on which they were drawn was boldly announced by defendants' chief executive officer pursuant to the unanimous action of its board of directors in carrying out the announced policy of the Federal Reserve Board. The right to do so was asserted unequivocally and insisted upon at the bar of the Supreme Court of the United States. Note the reasons advanced by defendant's counsel why the judgment dismissing the bill should have been affirmed by this court:

> "First, there were no proper allegations in the bill of a conspiracy or of unfair competition. Plaintiffs, on the contrary, alleged, in legal effect, that the defendants were preparing to do a legal thing in a legal way."
>
> "Second, the 'threatened acts' alleged in plaintiffs' bill to be in contemplation of the defendants were within the spirit, letter and intent of the Federal Reserve Act." (Appellees Brief in No. 679, page 59.)

Again, on page 60, learned counsel say:

> "There is nothing illegal, unusual, or untoward involved in the collection of a check in currency at the counter of the bank on which such check is drawn" (*Ibid.*).

Again they interpret for us the purpose of the official letters, Exhibits A and B to the original bill, as follows:

> "The clear import of exhibits 'A' and 'B' is to give every non-member bank the option of paying checks, in the hands of the Federal Reserve bank for collection, either in par exchange or currency. If the plaintiff banks voluntarily refuse to pay checks in par exchange, they ought not, we submit, in equity and good conscience, to be allowed to undertake to restrain the collection in the only other known medium of payment lawful for acceptance by the Reserve bank, viz., *in currency* without deduction for remittance charges made by the payee bank" (p. 62).

Defendants have been routed from these positions by the decision of this court in this case (256 U. S., 350), followed by the Brookings State Bank Case, 281 Federal, 222, and the Kentucky Case decided by Cochran, D. J. Nov. 14, 1922, 286 Fed., 566, 610.

It is earnestly insisted that the finding against the existence of wilful and malicious withholding of presentation of checks for the purpose of accumulating a large amount to be demanded in cash does not justify the denial of injunction against arbitrary publication of a non-par bank on the par list and against the coercive use of the checks thus solicited by irregular methods of collection. Such an application of the principles of the former decision of this court contracts those principles to the vanishing point. That decision condemned interference with the established business of plaintiffs as now conducted by any coercive method whatsoever.

The allegations of the bill do not charge any particular

method of accumulation. Any process of accumulation that aggregates a large amount falls within the charge in the bill and the mischief that is alleged to flow from presentation at the counter for payment. The trial court restricted the allegation to withholding checks *after their receipt* until they reached a large amount in the hands of defendant before presentation; that if presented through a daily process and two or more of them were thus handled, the evidence failed to support the charge, and no wrong was inflicted on plaintiffs.

This misconceives the gravamen of the bill and the undisputed evidence that through the operation of the par list, practically all foreign checks on a bank named therein converged in defendant's hands for collection. The Deputy Governor's letters repeatedly show that until a bank's name got on the par list, no items on it reached defendant; but afterwards they came in regular course. See this expression recurring in the correspondence:

> "We will accordingly include the name of your good bank in the next issue of our par list and *as soon as the items begin* coming to us, they will be forwarded," etc. (Trans., 84, 91, 93, 94, 99, 106, 107; App., 37, 39).

Then note the final threat and last act preparatory to coercive collection at the counter:

> "As soon as we are able to make necessary arrangements in your city we will again place the name of your bank on our par list, and begin collecting the items by presenting them for payment in cash, unless you will advise us that you will remit at par" (Tr., 116; App., 39).

It is the concentration of practically all these checks in one channel and demanding payment in cash that hurts, and that injury is the essence of the charge in the bill. All checks against a solvent bank must be paid and their payment is provided for by lawful reserves, a fraction of which alone is kept in cash and the balance in reserve deposits at financial centers. Mere delay in presenting a check helps a bank, in so far as the use of its proceeds in the interval is a help. Segregating and accumulating outstanding checks in the hands of a single holder who demands cash destroys the law of averages which this court holds in this case that all banks have a right to rely upon. Such segregation and accumulation is accomplished through the operation of the par list with a celerity and precision that surpasses any other known device. The injunction prayed for, if granted, would effectually stop the process because it would forbid handling checks on plaintiffs and the unauthorized publication of plaintiffs in the par list and thereby leave their checks to follow customary banking channels.

THERE IS NO BASIS FOR CONTENDING THAT THE PURPOSE OF THE PLAINTIFFS' BILL IS TO COMPEL THE RESERVE BANK TO AVAIL ITSELF OF THE SERVICES AND FACILITIES OF THE PLAINTIFF BANKS. THE EXACT REVERSE IS TRUE.

The purpose of the plaintiffs' bill is, to use the language of the Supreme Court, to preserve for themselves the right to continue "their business as now conducted;" and every remedy sought at the hands of the court is aimed at that result.

As now conducted the plaintiffs' business does not include nor contemplate any business relations with the reserve bank

whatever and that is the status which the plaintiff banks most earnestly desire to maintain. Whatever ground for contending that the country banks desire to compel the Reserve bank to avail itself of their facilities may have existed in previous argument and decision is now completely removed by the evidence before the court. The plaintiffs seek an injunction prohibiting the Reserve bank from arbitrary publication of the plaintiffs' names or addresses on the "par list," and from handling checks on non-par banks.

It has been proven that before the publication of a bank on that list the Reserve bank received only an occasional governmental check drawn upon such bank; but that after such publication the Reserve bank immediately began to receive a large proportion, 90 per cent or more, of all checks drawn upon it. The effect of the plaintiffs' prayer, if granted, would be to keep out of the hands of the Reserve bank all checks upon the plaintiffs on which it could be subjected to any charge for collection and remittance. The contention, then, that the plaintiffs seek to compel the Reserve bank to use the plaintiffs' services for the plaintiffs' profit falls to the ground.

Injury from Monopoly.

Monopolizing the sources from which floating checks come necessarily results in accumulation of these checks, and the whole scheme of the Federal Reserve System is successful in proportion to the extent of this monopoly. The damage from accumulation springs from the result and not from the method of its accomplishment. Withdrawal from the natural channels and artificial concentration in one hand is a necessary consequence of the unauthorized publication of

an outside bank on the Federal Reserve System's par list. It is not true that it is no more burden to the bank to pay all checks to a single holder than to pay the same amount in the aggregate to many holders. Diversity in holding affords opportunity of utilizing in such payment many different kinds of exchange. One holder may wish exchange on New York, another exchange on Atlanta, another exchange on Richmond, still others may have accounts with the drawee banks to which said checks may be credited. Keeping of these reserve accounts in these different locations is a distinct benefit to the outside banks and is cited by the Governor of the Federal Reserve Board as one of the fundamental reasons that keep so many State banks out of the system. Concentration of all these reserves in the Federal Reserve bank without liability for interest thereon is the one desideratum on the part of the system and the one great drawback to membership in the system. This thought exposes the real underlying policy of the effort to establish universal par clearance. If it is established, then there goes with the monopoly of collecting checks the monopoly of the enormous aggregate of deposits which banks must carry as a part of their reserve. Since Congress leaves the question of membership in the system in the uncontrolled discretion of the outside banks, an effort by coercive methods to compel universal par clearance is not only not authorized but, by necessary implication, forbidden by the spirit of the Federal Reserve Act and by the letter of the former decision of this honorable court.

(*b*)

DENIAL OF COERCIVE INTENTION IN THE EMPLOYMENT OF EMBARRASSING, ANNOYING, AND EXPENSIVE METHODS OF COLLECTION IS FUTILE.

From the Governor of the Federal Reserve Board down to the Deputy Governor of the defendant Reserve bank intention to coerce appears in all their official writings on the subject. The fact and effect of the coercion is recognized and attributed to the provisions of the Federal Reserve Act. Governor Harding described the process in an official letter to a congressman and said: "If this is coercion * * * it is unavoidable" (App., 27). Governor Wellborn said: "The whole question was fought out on the floor of Congress, and the country bankers lost—now they must abide the result" (App., 35).

Government Agent McCord said (according to the testimony of Mr. Tumlin) that the defendants were going to put on the par clearance campaign and that plaintiffs would be forced to submit because defendants were going to collect the checks on plaintiffs at the counter and he knew that that would ruin any bank (App., 50).

Deputy Governor Adelson received a letter from the Lamar County Bank saying:

> "I have carefully noted the threat involved which is now generally recognized as being 'the big stick' which the powers that be have decided to use to compel the clearing of checks at par" (App., 40).

to which he replied:

> "As officers of the Federal Reserve bank, we must carry out the provisions of the Federal Reserve Act, and as the par collection of checks is one of the provisions of that Act, we will be compelled to adopt means of collection that will no doubt prove expensive and annoying to all concerned in connection with those banks that do not voluntarily agree to remit at par" (App., 34).

Each of these statements imply coercive intent, aimed specifically at banks that refuse to remit at par, and they are but typical of all the written evidence in the case. They cannot be overborne by a disclaimer of the intention, made subsequently, with the obvious purpose of avoiding the effect of the decision of the Supreme Court of the United States.

"Presentation at the counter"—the outlawed method—is the big stick always used to force some unfortunate bank to renounce its rights and to submit to the orders of the Reserve banks to do something which they have no lawful right to require. It has been used to coerce banks to remit at par. It has been used to compel banks to move their reserve accounts out of cities through which the streams of their commerce naturally flow and into Reserve bank cities away from and outside of the natural channels of the communities' trade. It has been used to drive State banks' reserves out of commercial banks and into Reserve banks, and had the Supreme Court not put the stamp of illegality on it—it would have continued to be available for any ulterior purpose to which it might be put.

The reputation of a solvent bank is no less sensitive to attack than the character of a virtuous woman. A threat of

embarrassment to a bank is therefore the most potent form of coercion that could be employed. It could withstand mere annoyance and a reasonable amount of expense, but "embarrassment" is intolerable.

Analysis of the Issues.

This case is clearly stated by the Federal Reserve Board, speaking through its Governor, Mr. W. P. G. Harding, for all the Federal Reserve banks in a communication to a Senator of the United States, dated April 1, 1920, and found in the record at page 122 (App., 22). The issue is formulated by him as follows:

First. That under the provisions of sections 13 and 16 of the Federal Reserve Act, the Board is charged with the duty and responsibility of inaugurating a complete check-clearing system throughout the United States.

Second. The practice of making exchange charges by the banks was so deeply rooted that most of the banks very naturally looked upon the charge as a normal and legitimate source of revenue and were reluctant to give it up.

Third. The law does not provide any penalty upon non-member banks for refusing to remit at par, and therefore it was clearly impracticable to establish a complete clearing system over night.

Fourth. Thereupon it was determined to begin a progressive campaign of education along the line of least resistance, beginning in New England, where only a few banks in Vermont objected; thence in the New York District in a part of

which the opposition was more determined and it was necessary for a while to make collections on some of the banks through the express companies; thence in the districts of Philadelphia, Chicago, Cleveland, Kansas City, and Dallas, Texas, in the order named, and then in certain other States in other districts. "It was deemed wise," says the Governor, "*not to force matters* by making collections through the express companies or other agencies *until* the non-member banks had had the whole situation fully explained to them and when a majority of the banks in a Federal district had so agreed, arrangements were made to collect on non-assenting banks by means of agencies, *announcement then being made* that the system was operative throughout the entire district or in particular States in a district."

Fifth. A total of some three thousand banks, principally in the agricultural districts of the West and South, made a determined resistance (note the case at bar and the parallel cases in Oregon (281 Fed., 222), Kentucky (286 Fed., 566, 610), and North Carolina, No. 823, present term) by reason of which the Governor advises the Senator that "unless Congress should be willing to enact some law making it decidedly to the interest of banks to remit at par, just as in 1865, by the exercise of its taxing power, Congress made it to the interest of State banks to retire their State bank notes, it is difficult to see how it is possible to accelerate the present rate of progress in the development of a complete nation wide check-clearing system through the Federal Reserve Board."

Sixth. The Senator was further informed that the case at bar was pending and would possibly reach the Supreme Court of the United States, and therefore probably several

months would elapse before a complete clearing system *could be established* in the Atlanta District.

The analysis of the situation thus made by the Governor of the Federal Reserve Board was circularized to all the governors of the twelve Reserve banks on April 5, 1920, and on April 12, 1920, a copy of it was enclosed to a Congressman (App., 27) who was further informed that "All non-member banks have been advised that if they do not care to remit collection will be made through some outside agency by having the checks presented at the bank counters for payment. *If this is coercion, as contended by your constituent, it is unavoidable.*"

These statements serve as an accurate epitome of the allegations of the bill in this case. At that time, the officers and directors of the defendant Reserve bank were in complete understanding and accord with the Reserve Board. See Exhibits A and B to original bill (Tr., 74, 77; App., 18, 20).

Let us further condense the issue which was inexorably submitted to the plaintiffs by the defendants (and which plaintiffs met by filing this bill).

The Federal Reserve banks, including defendant, assumed a legal duty to exercise a discretionary power for the establishment of universal par remittance. Resistance was encountered. Persuasion failed. Universality was impossible unless submission was enforced. Possession of checks of plaintiffs was a condition precedent to coming into forcible contact with them. Force consisted in demanding payment of such checks at their counters outside of regular banking channels. This force amounted to warfare voluntarily sought and waged by defendant against plaintiffs. Congress

not having seen fit to supply penalties with which to subjugate plaintiffs, the collecting together through the par list of checks on plaintiffs aggregating amounts in excess of lawful cash reserve requirements and presentation at counter for the avowed purpose of coercing submission to the loss of exchange revenues as the lesser evil was thought to be a permissible exercise of the ordinary right to cash a check. That course has been specifically condemned by this court (256 U. S., 350).

The purpose to establish universal par clearance is still asserted in the record, but a change of purpose is now put forward, viz., that if in the judgment of defendant a drawee bank tenders solvent and acceptable drafts in payment of checks presented at counter they will be accepted to prevent embarrassment on account of shortage of cash. Such a course was never thought of until the decision of the Supreme Court on May 16, 1921.

The principle of the decision of this court on former appeal cannot be escaped by the expedient resorted to in the amended answer of accepting exchange drafts in lieu of cash at the counter. Such an expensive and irregular method of collecting checks voluntarily enticed into the hands of the Federal Reserve banks imports a purpose outside of and beyond the mere collection itself. Otherwise the onerous task would not be undertaken under the discretionary powers of the banks conferred by the act. Governor Harding testifies what that purpose is (Tr., 300), viz., that such a course would ultimately result in the non-member bank agreeing to remit at par, because it would be deprived of its revenues from exchange in either case.

Unless this court meant to limit its decision to a particular means for the accomplishment of an unjustifiable end, the amended course of defendants is as obnoxious to the decision as the original course was. Appellants submit that the "warfare" itself was condemned, not merely a particular weapon used in a particular way. It is not a case of a just war being waged with weapons condemned by the rules of civilized warfare. It is a case of unjustifiable warfare on these comparatively feeble competitors regardless of the caliber of the artillery.

The only essential facts required to make the principles of this decision applicable are:

1. The existence of a purpose outside of and beyond the mere collection of the face of the check.

2. The collection together of checks on defendants for presentation in a body as a means of carrying out the ulterior purpose.

3. Injury to the defendant banks by the accomplishment of that purpose. That these three elements exist in this record appears beyond question.

The purpose is to establish universal par clearance—reiterated and emphasized in all the official writings of the Federal Reserve Board and the Federal Reserve banks.

The convergence and concentration of checks for presentation is confessedly accomplished through the operation of the par list.

The injury to defendants is the breaking down of their legitimate business based on lawful charges for the service of transporting funds from place to place—a business sanc-

tioned by custom as old as the banking business and expressly recognized and protected by the terms of the Federal Reserve Act itself.

The existence of such facts at the time the bill was filed is admitted and defendants seek refuge in a complete change of front by disclaiming any intention hereafter to do the things they *said more than a thousand times* they were going to do in the intensive campaign for putting par clearance into effect in the Sixth Federal Reserve District, and thereby catch up with the other districts, all of which had progressed much faster and further toward the ultimate goal of *universal par clearance*. The sole issue is as to the legality and propriety of this warfare.

Analysis of the Proof.

In July, 1919, defendant Reserve bank had circularized banks in its district by form letter (Tr., 69) showing 11,000 non-member banks remitting at par. By December this number increased to 16,196 above stated, or more than five thousand in less than six months. This was stated to be the result of "the twelve Federal Reserve banks uniting in their efforts to bring about the establishment of a national par list," as stated in said circular. Plaintiffs had a right to anticipate that, thus uniting, and thus succeeding, the same methods would be adopted in the Sixth District that were so successful elsewhere, and that these were the methods threatened. Upon this information and belief the allegations of paragraphs 46 to 51 were based (App., 6-10). What clearer proof of the existence at that time of such a purpose is needed? A check cannot be collected except by presentation.

If not presented through regular channels, presentation through special agencies is the only possible alternative, and all these possible methods are set forth in separate paragraphs. In answering these paragraphs of record, "defendants admit that in order to collect checks on non-member banks which had declined to remit at par for checks drawn upon such banks, and in the hands of defendant Federal Reserve bank for collection, said defendant bank had intended in some instances to employ agents in certain towns where such banks were respectively located, and had intended, from day to day, in regular course of business, to mail checks so drawn on said non-member banks to such agents, with instructions to present the same at the counters of the respective drawee banks for payment, and that the defendant may in the future appoint agents for the same purpose and mail checks to such agents with similar instructions." The same admission is made as to express companies (App., 8).

So we have the basic threat of embarrassing, annoying and expensive methods of collection. We have the specification of these alternative and interchangeable methods charged in the bill, but the gravamen is not the particular method employed. The fundamental wrong complained of is the oppression involved in any irregular method of collection not in accordance with banking practices, designed to force submission to the announced plans of the Federal Reserve System to "establish" universal free service in transporting funds through banking channels. The bill expressly charges "that any method which disrupts the orderly course of business involved in the collection of checks through the mails would necessarily be ruinous to the business of petitioners and other banks in like condition if persisted in, and would

result in either the submission of the petitioners or the abandonment of their business altogether under their State charters" (par. 51 of the bill; App., 10). "That the adoption of any of the methods hereinbefore described, *or any like methods,* for the purpose of coercing petitioners to relinquish the revenue accruing to them by exchange on remittances, would operate to deprive" them of their property contrary to the Constitution (par. 52 of original bill; App., 10).

But we have defendant's admission of intention to employ the methods specified, qualified, only, by a denial of intention to accumulate by withholding presentation and on this denial alone the decree is based. There is also a denial in the answer of "any purpose or intent other than to collect the said checks." The import of this denial must have escaped the honorable gentlemen who verified the answer. How can this be true in the light of the expressed purpose set forth in the following resolution of defendant's directors unanimously adopted on December 11, 1919?

> "WHEREAS, Under the terms of section 13 and section 16 of the Federal Reserve Act, Federal Reserve banks are required to receive on deposit checks or drafts payable upon presentation; and
>
> "WHEREAS, The other Federal Reserve banks have made rapid strides in putting their respective districts upon a par basis; and
>
> "WHEREAS, This bank has not kept pace with the rapid strides of other Federal Reserve banks in putting par clearance into effect; and
>
> "WHEREAS, At recent conferences of Federal Reserve agents and Governors of the Federal Reserve banks, the sentiment was expressed that the entire

country should be put on a par-clearance basis in accordance with the Federal Reserve Act;

"*Be it resolved*, That the Board of Directors of the Federal Reserve Bank of Atlanta does hereby instruct the officers of the bank to adopt such plans and incur any necessary expense in order to effectively arrange for the par clearance of checks and drafts drawn upon present non-par remitting banks payable upon presentation, received upon deposit by the Federal Reserve Bank of Atlanta."

(Tr., 62.)

These resolutions have never been rescinded and cannot be "talked" away. They form the center of the picture toward which all lines of perspective converge.

If the mere collection of checks was the sole purpose, what is meant by the recitals that other Federal Reserve banks have made rapid strides in putting their respective districts upon a par basis? That defendant bank had not kept pace with these rapid strides; that a recent convocation of executives of the Federal Reserve banks (plural) had expressed the sentiment that the entire country should be put on a par basis; that therefore action was demanded, and that action was *to adopt plans and incur any necessary expense* in order to effectively arrange—for what?

To merely collect such checks as came into defendant's hands without expense to the member banks? Not at all. The officers were instructed *to effectively arrange for the par clearance of checks drawn upon* NON-PAR REMITTING BANKS.

As these plans developed, the defendant did not confine itself to checks that merely drifted into its hands for collection, because none such came. In the language of U. S.

District Judge Cochran, in the Kentucky case the defendant adopted the "unusual and heretofore unheard of procedure of *seeking out* plaintiff's checks for collection and presenting them in a body for payment over the counter" (286 Fed., 566, 610). Defendant openly threatened before this bill was filed to do precisely that, as to the checks of a non-par bank in the Sixth District. See letter from the Deputy Governor to the Farmers Bank of Iron City, Tenn., dated January 10, 1920, where the following language is found:

> "*We trust you will give the matter further consideration as we would dislike very much to cause you the annoyance that would be incurred should we find it necessary to arbitrarily place your name on our par list, and arrange to present your items for payment in cash*" (App., 34, 36).

See also a like letter to the Holmes County Bank of Bonifay, Fla., dated February 16, 1920. (The restraining order was issued January 15, 1920, but the original bill was limited to banks in Georgia and therefore the campaign was continued against this and other banks in other States until by amendment the bill was extended for their protection.) This letter disclosed that this bank's name had been on the par list apparently by consent that was withdrawn on February 5, 1920. Note that the name of this bank was removed from the par list by defendant, but only because—

> "Our arrangement for collecting checks drawn on you, *by presenting them for payment in cash* * * * have not been perfected. On account of the large number of non-par remitting banks in the Sixth Federal Reserve District, it is not possible for us to *arbitrarily commence collection at par on all banks at*

> *one time,* and therefore we have to go about it by setting off certain areas to be taken up at a time. As soon as we are able to make the necessary arrangements in your city, *we will again place the name of your bank on our par list* and begin collecting the items by presenting them *for payment in cash,* unless you will advise us that you will remit at par (App., 38, 39).

Since the decision of the Supreme Court on the former appeal in this case, defendant's answer avers that their only purpose in adopting these irregular methods of collection is to get the proceeds of checks in their hands. Prior thereto with the avowed object of establishing universal par clearance, defendant sought out checks on non-par banks (by arbitrarily placing their names on the par list) that they admit would never reach them otherwise. Thus defendant itself creates the condition that it pleads in justification of its coercive methods. It hungers for an excuse to assault the outside banks, and finding none except their natural aversion to being assaulted, it creates the *casus belli* it pleads in explanation of its assault. One is reminded of the fable of the wolf and the lamb drinking from the brook at the same time and the fatal result to the lamb.

Motive, intention, or purpose, exists in the mind, and proof thereof is generally difficult and unsatisfactory. But on this record it is established that at the time this bill was filed the defendant Reserve bank had deliberately resolved by formal corporate action to co-operate with the other Reserve banks to establish universal par-clearance in the United States. That it purposed to carry its district by persuasion if possible, if not by force. Persuasion had confessedly failed.

Coercion was to assume the form of continuous demands for currency beyond the ability of any bank to meet. In order to authorize such demands the plan was to send out a nation-wide invitation to all banks into which the checks of recalcitrant banks came, to forward such checks to defendant and defendant would undertake to collect their proceeds and transmit them to the hands of the banks entitled thereto without charge. This invitation assumed the form of the "par list." This par list was printed in the Government Printing Office and distributed (presumably under mail frank) from Washington under the supervision of the Federal Reserve Board with the *imprimatur* of the U. S. Government behind it. Its contents were the consolidated information supplied to the central office by the twelve Reserve banks and their branches. It went into the counting-houses of some 25,000 banks. It performed the same service to each of the Reserve banks that an army of solicitors seeking the privilege of giving away this free service could have performed. The par list is obviously impossible without full co-operation and concert of action by all the twelve Federal Reserve banks.

Thus, defendant claims that in good faith it considers itself bound under the law to undertake these collections, and under a duty to invite them, in carrying out a concerted plan to put into effect universal par clearance throughout the United States. That this plan has the approval of the Federal Reserve Board, and that regardless of expense, and injury to the business of appellants which it concedes, it must employ these methods until the non-par banks yield to the pressure and voluntarily agree to furnish the service without charge, as the lesser of two evils. The learned trial judge

concurred in this view and his judgment has been affirmed by the Fifth Circuit Court of Appeals (284 Fed. 434).

Appellants submit this interpretation ignores the purpose of this court's decision. That decision rested upon the principle that in organized society very few rights are absolute. The application of that principle to this case is illustrated by the twentieth assignment of error then before the court, viz.:

> "In holding and deciding that, because, under the interpretation the lower court placed upon the Federal Reserve Act, the purpose of Congress was to establish a system of universal par-clearance, any *method of collection* could be rightfully employed by Federal Reserve banks to further this purpose regardless of its effect upon the business and private property rights of State banks wholly without the jurisdiction of the Federal Reserve Act and of the Federal Reserve banks created thereby."

That assignment of error was necessarily sustained by this court when it said "it is not enough to refer to the general right of a holder of checks to present them but it is necessary to consider whether the collection of checks and presenting them in a body for the purpose of breaking down the petitioner's business as now conducted is justified by the ulterior purpose in view." Such a course is compared to a run on the banks, and condemned, although its effect may stop short of absolute ruin.

The coercive effect of presenting these checks for payment in cash was conceded; the purpose to so handle them is reiterated more than a thousand times over the official signature of defendant's officers pursuant to the action of its

...doctors. The right to so handle them was asserted boldly ...and continuously up to the conclusion of the argument in ...the court on the last appeal. At least two instances of the ...exercise of this purpose are proven (sending Tutwiler to ...Selma, Ala., Tr., 301, and accumulation of checks on State ...Bank of Quitman, Fla., Tr., 307), and threats to place on the ...par list and collect in cash were officially sent to more than ...a thousand non-par banks in the district. Is it not trifling ...with testimony to say that all this written and undisputed ...evidence failed to support the charge of intention to coerce? ...Indeed actual coercion is conceded in the decree and in the ...opinion of the Fifth Circuit Court of Appeals affirming that ...decree but is condoned because the learned judges could ...not bring themselves to believe that defendant was guilty ...of an abuse of the abstract right to present checks for pay-ment in cash in the process of making collections between banks. Note Judge Walker's language: "If the holder of the checks is guilty of no wrong the fact that the payee is inconvenienced by having to pay in cash would not give the latter a valid ground of complaint." The court here resumes the exact position it occupied before the Supreme Court reversed it on the former appeal. Bear in mind, none of these checks on plaintiffs ever reach defendant till defendant has solicited them through the par list; that this solicitation follows the persistent refusal of plaintiffs to remit at par; repeated warning of this step is officially given and opportunity afforded the dissenter to repent. Finally the issue is joined; the par list goes out; the checks come in; the cash is demanded; the embarrassment, expense, annoyance, inconvenience if you please, follows, and yet no wrong has been committed. The object sought is, confessedly, par remit-

tance—universal, all-inclusive par remittance. Plaintiffs obstruct the process; defendant pleads for the removal of obstruction without effect; the weapons of coercion are solicited and received in accumulated numbers and amount and effectively used. All this is conceded. And still no wrong is found because under the decree the defendant is authorized to collect all checks received by it. Mr. Justice Holmes said in this case

> "most rights are qualified. * * * When we think of the ordinary case the right of the holder (of a check to demand cash) is so unimpeded that it seems to us absolute. But looked at from another side it cannot be so * * * Banks, as we know them, could not exist if they could not rely upon averages and lend a large part of the money that they receive from their depositors on the assumption that not more that a certain fraction of it would be demanded on any one day. If without a word of falsehood * * * a man by persuasion should organize and carry into effect a run upon a bank and ruin it, we cannot doubt that an action would lie. A similar result, even if less complete in its effect, is to be expected from the course that the defendants are alleged to intend, and to determine whether they are authorized to follow that course, it is not enough to refer to the general right of a holder of checks to present them but it is necessary to consider whether the collection of checks and presenting them in a body for the purpose of breaking down the petitioner's business as now conducted is justified by the ulterior purpose in view. If this were a case of competition in private business it would be hard to admit the justification of self interest considering the now current opinion as to public policy expressed

> in statutes and decisions. But this is not private business. The policy of the Federal Reserve banks is governed by the policy of the United States with regard to them and to these relatively feeble competitors. We do not need aid from the debates upon the statutes under which the Reserve banks exist to assume that the United States did not intend by that statute to sanction this sort of warfare upon legitimate creations of the States" (256 U. S., 358).

Confronted by that decision and after the proof on the trial had developed down to the last witness for the defense, overwhelmingly establishing, by the sworn admissions of the defendants themselves, the essential facts that demand the injunction prayed for, defendants seek to recant, say they were merely "bluffing" *despite the actual execution of the threats* until stopped by the restraining order, and formally put in their answer a so-called disclaimer of intention *in the future* of doing anything that could possibly prove embarrassing, annoying, or expensive to plaintiffs.

It cannot escape the attention of the court that a disclaimer operating *in futuro* presupposes the prior existence of the thing disclaimed. If one has not sinned one cannot repent. Repentance imports guilt. A promise "not to do it again" is meaningless if it was not done before. The disclaimer itself demonstrates the previous mental attitude.

No matter what intentions the defendants may have had at the time the disclaimer was filed, it is inconceivable that under the evidence their intentions at the time this bill was filed were to limit the methods of collection to that set out in their amended answer on January 12, 1922. The defendants now say they had no intention of ever using

methods that would prove embarrassing, annoying and expensive to the banks. Mr. McCord says that individually in his interrogatories. What, then, did he have in mind when he agreed with Mr. Tumlin that their methods would break the banks, that the banks could not stand them? Did not Mr. Adelson mean what he said in his various letters stating that messengers would be sent to the counters of the banks with demand for payment in cash or in cash only?

It is understandable how one man in one expression concerning his plans and intentions would let drop a phrase that he did not mean. It is incredible that a large board of directors and a full staff of executive officers and learned counsel, charged with the great responsibility of managing a tremendous banking institution, should send out, over their official signatures, definite and unequivocal statements to more than a thousand banks, knowing what the effect of those statements would be if carried out and not mean what they said. But that is not all. For eighteen months after such statements were made and spread broadcast among the banks in the Sixth District the intention to do the things threatened was reiterated through all grades of the Federal courts, concluding in the Supreme Court of the United States, with learned emphasis, in an elaborate brief, that the defendants had a perfect right not only to threaten, *but to do*, the things complained of.

Note the language:

> "At the outset of the argument on this phase of the case we lay it down as the first proposition relied on, *that the threatened acts charged are entirely valid and lawful*, considered in and of themselves."
>
> Appellee's Brief in Supreme Court, p. 52.

Governor Wellborn says he signed the circular letter containing these threats without specially noticing them. He admits that after Deputy Governor Adelson had prepared the letter for signature it was submitted to and approved by the official staff and was withheld a day or so, until each member of the executive committee could examine it. It was finally approved by all of them, signed by the Governor, manifolded more than a thousand times, and distributed under registered cover to more than a thousand non-member banks in the district. But it did not stop there. Replies came in resenting the coercion implied in the threat. Deputy Governor Adelson noted it and replied to it, and regretted the necessity for it, *but repeated it again and again.* The Deputy Governor was appointed to take charge of the matter; was especially charged with the responsibility of executing the order of the directors to adopt plans and incur any necessary expense *in order to effectively arrange for the par clearance of checks* drawn on *non-remitting banks.* Governor Wellborn testified on the trial in January, 1922, that "we were prepared to go ahead and do it"—and he (Wellborn) backed up anything Mr. Adelson did.

Defendants may declare now that their intentions were not such as were disclosed in their letters, in their conversations and in their actions, but it is submitted that the court must concede the right of the plaintiffs to take defendants' words, their writings and their deeds, spoken, written, and performed *dum fervet opus,* as demonstrating their true intentions at *that* time. The declared intentions of the defendants at *this* time cannot be used to prevent the grant of a proper remedy against the threatened injury so clearly demonstrated in the evidence presented on the trial.

Conclusive written evidence that the alleged intention to accept exchange drafts at the counter to prevent embarrassment to plaintiffs by demanding cash was unwillingly forced on defendants by the decision of the Supreme Court in this case is found in the record. The opinion of the court ordering a decree dismissing the original bill was entered by Evans, D. J., on April 3, 1920. Just six days afterward (April 9, 1920), even before the decree was entered, the Deputy Governor wrote to I. W. Arnold, cashier of the Merchants and Farmers Bank of Davisboro, Georgia, regretting that said bank would no longer remit at par. Mr. Arnold was reminded of the campaign then in progress that had been temporarily interrupted by the restraining order in this case and his attention called to Judge Evans' ruling, then about a week old, which Adelson thought would permit defendants to resume activities. This bank was then warned as follows: "It occurs to us that you would perhaps prefer to continue remitting at par rather than have the items presented to you *for payment in cash,* when we make arrangements along that line" (Tr., 128).

Flushed with the supposed victory of a dismissal of the bill, defendants unequivocally threatened plaintiffs with demands for cash. Confounded by the reversal of that decree by the Supreme Court, defendants seek to deny the purpose thus officially expressed. Out of their own mouths they are condemned. Over their own signatures defendants establish plaintiffs' right to the relief sought. See App., p. 2.

COMPLAINANT'S RIGHTS MUST BE MEASURED BY THE FACTS EXISTING WHEN THE BILL WAS FILED.

When a defendant is haled into court on a statement of facts, existing at the time, that justify relief from threatened injury, he cannot avoid an injunctive decree merely by confession and repentance. It is true that injunctions operate *in futuro*, and their grant or refusal may be affected by occurrences between the filing of the bill and the final hearing, but *ad interim* developments must be such as to remove all possibility of future injury.

A change in the law of procedure, or the happening of the event sought to be enjoined, *independently of the act or connivance of the defendant*, furnish cases in point. See Dinsmore *v.* Southern Express Company, 183 U. S., 115; Berry *v.* Davis, 242 U. S., 468; Duplex Printing Co. *v.* Deering, 254 U. S., 464.

Where *the defendant* seeks to change the status and thus avoid the consequences of wrongs or wrongful intent, the grant or refusal of injunction will be determined upon the facts existent when the bill was filed.

This is announced in the cases of Jones *v.* Montague, 194 U. S., 147; Tennessee *v.* Condon, 189 U. S., 64, 70, following Mills *v.* Green, 159 U. S., 651.

The last case cited clearly points out that where the change of status results from the acts of the defendant after service the court will proceed to deal with the rights of the parties as they stood at the commencement of the suit, citing Tucker *v.* Howard, 128 Mass., 361; Attorney General *v.* Gt. Northern, 4 D. G. & Sm., 75; Terhune *v.* Midland Rwy., 36 N. J.

Eq., 318; 38 N. J. Eq., 423; Platteville *v.* Galena, 43 Wis., 493.

The same distinction is drawn in the Trans-Missouri Freight Asso. case, 166 U. S., 290. The same is true in Southern Pacific Terminal Co. *v.* Interstate Commerce Commission, 219 U. S., 498.

The presence of a public interest in the two cases next above cited is paralleled in the case at bar. There is a profound public interest in the result of this lawsuit. Crimination and recrimination resulting in a state of war between a large section of State banks and the Federal Reserve System has existed ever since the policy of inaugurating universal par clearance was adopted by the Federal Reserve Board. It appears in the record to be nation-wide. The repentance of defendants will not stop it. But a permanent injunction against defendants from further prosecution of it would make its successful termination impossible and result in a policy of peace between the Federal Reserve Board and the country banks.

As a part of the contemporary history of the conflict between the two banking systems, attention is called to the Concurrent Resolution No. 33, introduced in the Congress by Senator McLean on the 25th of January, 1923 (subsequently embodied in section 506 (*a*) of the Farm Credits bill approved March 4, 1923), calling for an investigation of the methods of administration of the Federal Reserve Act by the Federal Reserve Board with respect to the reasons which actuate State banks in failing to affiliate with the Federal Reserve System. A perusal of the transcript in this case would illuminate that subject.

With full appreciation of the weight to be given the findings of fact by a trial judge, appellants respectfully insist that the ordinary reasons underlying the unwillingness to reverse on findings of fact are either non-existent or inapplicable here. The controlling proof consists of official written documents incapable of denial. There is no room for difference of opinion as to credibility of witnesses, involving their appearance, their interest, their manner of testifying, etc. Indeed, so far as *facts* go, there is no conflict of testimony, and the evidence fully supports the substantive allegations of the bill, and the decree of the court below should be set aside and a decree entered granting the injunction as prayed for and taxing all costs on defendants. This result, we submit, is imperative if the principles announced by the Supreme Court to be controlling in this case are correctly applied.

THIRD.

THE TRIAL COURT ERRED IN REJECTING THE EVIDENCE OF THE ACTIVITIES ENGAGED IN BY THE FEDERAL RESERVE BANKS UNDER THE APPROVAL OF THE FEDERAL BOARD IN THE OTHER FEDERAL RESERVE DISTRICTS.

(*Assignments of Error Nos.* 4, 5, 6, 7, 8.)

(Tr., 481.)

An amendment to the original bill was tendered and allowed on March 24, 1920, in which specific allegations of the coercive methods employed by other Federal Reserve banks

were set up in the pleadings (Tr., 22). On the trial an additional amendment was allowed, extending the scope of the bill to all the country banks throughout the United States who are not members of the Federal Reserve System and have not agreed to remit at par (Tr., 51). The rejected evidence has been epitomized in the appendix to this brief, beginning at page 61. Detailed comment upon it is unnecessary. It speaks for itself in loud tone and unsavory import. It has resulted in preliminary injunctions by two United States district judges, one at Brookings, Oregon, in the case of Brookings State Bank against Federal Reserve Bank of San Francisco, 277 Fed., 430 (same case, 281 Fed., 224), and Farmers and Merchants Bank of Catlettsburg, Ky., *v.* Federal Reserve Bank of Cleveland, Ohio, decided November 14, 1922, 286 Fed., 566, 610.

All this evidence was admissible to prove the specific allegations of these amendments, which amendments were but an elaboration of paragraph 48 of the original bill charging knowledge of the defendants of the methods employed in other districts and intention to employ the same in enforcing par clearance in the Sixth District. The amendments were germane to the original cause of action and were properly allowed and the proof offered and rejected was in support of these allegations. All the Federal Reserve banks had united in a common enterprise. The policy of their united effort had been formally approved by the Federal Reserve Board given general supervision over them by the law of their creation. Each and all of them were instructed to carry out the common policy in attaining a common object. Under the law, each member of this system (thus combined in the prosecution of a common enterprise, the success of which

ex vi termini, included complete enforcement of the system throughout each of the twelve districts) acted in the interest of all and the acts of each member of the combination became the acts of all. The evidence was objected to on the single ground that it was proof of *res inter alios acta.* It is respectfully submitted that this objection was not sound and that the evidence was admissible under the doctrine authoritatively announced by this court in the case of *Hitchman Coal & Coke Company v. Mitchell, 245 U. S., 229, 249,* and the authorities collated in support of the following excerpt from the opinion of the court in that case on page 249:

> "The objection is untenable. In order that the declarations and conduct of third parties may be admissible in such a case, it is necessary to show by independent evidence that there was a combination between them and defendants, but it is not necessary to show by independent evidence that the combination was criminal or otherwise unlawful. The element of illegality may be shown by the declarations themselves. The rule of evidence is commonly applied in criminal cases, *but is of general operation;* indeed, it originated in the law of partnership. It depends upon the principle that when any number of person associate themselves together in the prosecution of a common plan or enterprise, *lawful or unlawful,* from the very act of association there arises a kind of partnership, each member being constituted the agent of all, so that the act or declaration of one, in furtherance of the common object, is the act of all, and is admissible as primary and original evidence against them. Pleasants *v.* Fant, 22 Wall., 116, 119; Connecticut Mutual Life Ins. Co. *v.* Hillmon, 188 U. S., 208, 218," and other cases cited.

ASSOCIATION AND CO-OPERATION ARE ADMITTED.

The twelve banks of the reserve system are the equival of departments in a business enterprise. Each has cer duties and relations to the system. Governor Harding st that "The Board is doing all in its power to have the clear system to apply equally to all sections and to all bank (App., 25). It directed all banks to co-operate and fol a common plan. It brought the various officials together conference to exchange experiences, to discuss and de procedure, to compare progress, to encourage one by the s cess of another, and to stimulate the efforts of the lagga It tabulated the successes in other districts and furnished t information to the defendants as proof of the uselessnes resistance. It undertook the compilation of the par list, t most powerful weapon of all, and its printing at the G ernment Printing Office.

There was a common purpose expressed by the Gover of the Board "to have the clearing system apply equall all sections and to ALL BANKS." That includes the pl tiffs. The par list covered all sections and the purpose t to have it cover ALL BANKS.

In the printing and preparation of this par list, for t use of all twelve Reserve banks, the Reserve Board w either the principal and the banks the agents, or the ba were principals and the Board the common agent of all them, or they were all joint principals. No other relati ship between them is possible under the co-operation a mitted to exist between them. In relation to this compa the act of one was the act of all.

The admission of defendants speaking through Adelson, Deputy Governor, that "the twelve Federal Reserve banks are co-operating" is not repudiated and stands uncontradicted. This corroborates Governor Harding's statement that the Board was doing all in its power. There was but one par list for all banks. It was essential to the program under which all checks on banks in the Sixth District, caught in the net of the other eleven banks, were sent to the Atlanta bank for collection, and all checks on other districts corralled by the Atlanta bank were sent to the reserve banks in which the drawee banks were respectively located.

The words "embarrassing, annoying and expensive," used by the Governor of the Atlanta Reserve Bank in his letter of December 23, 1919 (App., 20), to 1,050 non-member banks, and used by Deputy Governor Adelson in numerous letters before and after that time to non-member banks, all of which appear in the record, constituted a new expression in banking relations. It required definition and elucidation, especially in view of the fact that it could not be conceived that the defendant bank or its officers intended to use embarrassing, annoying or expensive methods that would render them liable to the penalties provided by the statutes of the various States to protect banks against defamation, or words and acts injurious to their credit. In order for the court to have an accurate insight into what this expression meant, testimony was necessary to show the methods that had been adopted in other parts of the country by other Federal Reserve banks operating under the same law and under the same general supervisory authority. Being a new expression, proper definition could not be found in the books. It is significant that the agents of the various Federal Reserve

banks in the several districts covered by this testimony used the same weapon of coercion, viz., publication of the bank on the par list and presentation of the checks thereby enticed into their hands at the counter for payment in cash. The offer to accept exchange at par was made, *provided* the drawee bank would agree thereafter to remit at par through the mails for checks coming from the Federal Reserve banks. Clearly the testimony offered by the plaintiffs illustrating the acts of agents of Reserve banks in other districts was admissible.

The whole record is now before this court on appeal in equity. It is submitted that it is the function of this court no less than its gracious privilege, to end this litigation on the merits by a final adjudication that will restore peace between the two great banking systems of the United States. Appellants submit, therefore, that if the court should concur in the view that the trial court erred in rejecting this evidence, the rejected evidence should be given such consideration as may be necessary and the judgment of the trial court should be reversed with direction to enter final decree granting the injunction as prayed for under the original and amended prayers of the bill.

Subsidiary Questions.

(*a*) THE COURT ERRED IN ADMITTING THE JOINT ANSWERS OF DEFENDANT UNDER EQUITY RULE No. 58.

(*Assignment of Error No.* 11.)

Interrogatories were propounded by plaintiffs to four named defendants under Equity Rule 58. These questions numbered 1 to 316, inclusive, were in the same words. No

objection to the form of the questions was filed. The four defendants filed joint answers to these questions. Plaintiffs objected to these answers, when tendered in evidence by defendants, on the grounds:

(*a*) that said answers were joint and not several;

(*b*) that Rule 58 required each of said defendants to answer said questions separately and fully in writing under oath, and

(*c*) that said answers of each defendant separately should have been signed and filed by him (Tr., 360).

Said objections were overruled and said answers admitted in evidence. This seems to be in direct conflict with this language of the rule: "Each interrogatory shall be answered separately and fully and the answers shall be in writing, under oath, and signed by the party or corporate officer interrogated."

In commenting on this rule in the case of *Quirk v. Quirk*, 259 Fed., 597, the learned district judge held that the object and purpose of separate answers was to provide against and condemn attempted evasion and evoke the truth, saying: "The truth is always the truth, and telling the truth will not hurt anyone except in so far as he ought to be hurt."

The rule clearly contemplates propounding the same question to more than one witness, as was done in this case with respect to numbers 1 to 316.

Contradistinguished from these questions, numbers 317 to 328 were limited to defendant Wellborn (Tr., 265); 329 to 333 to defendant McCord (Tr., 267); 334 to 341 to defendant Bell (Tr., 269), and 342 to 352 to defendant Adel-

son (Tr., 270). Thus each of these defendants was definitely informed, as the rule prescribed, of the questions he was to answer.

The joint answers defeat the purpose of the rule, and amount to no more than an amendment to the answer of the bank. Where knowledge or intent is called for, ignorance of one of the four could be used to deny joint knowledge or intent by all, or, conversely, knowledge or intent had or entertained by one only would justify a common answer by all. A cursory glance at the questions and answers discloses that the individual knowledge of each of the defendants is not reflected in the joint answers filed, and the evidence in this form should have been rejected.

(*b*) THE COURT ERRED IN DISALLOWING INTERVENTION OF BANKS OUTSIDE THE SIXTH DISTRICT.

(*Assignments of Error Nos.* 9 *and* 10.)

(Tr., 481.)

Plaintiffs amended the original bill by alleging that they were affected by the par-clearance activities of all the Federal Reserve banks in the Federal Reserve System. This amendment was duly allowed and answered (Tr., 51).

The answer averred as a matter of law that banks outside of the Sixth Federal Reserve District were not proper parties to this case (Tr., 56). Plaintiffs formally tendered an intervening petition in behalf of seven banks located in the fourth, fifth, seventh, eleventh, and twelfth Federal Reserve

istricts (Tr., 358). This intervention was disallowed by rder of January 11, 1922 (Tr., 359). Between the allownce of the amendment and disallowance of the intervention ormal testimony was tendered and rejected as set forth in he record. After said intervention was disallowed, a large olume of testimony and documentary evidence was duly endered and rejected under objection of defendants, as set orth in the record.

The object and purpose of plaintiffs in the foregoing proeedings was to enlarge the scope of the bill to embrace the ntire Federal Reserve System. The sole ground of objecon by defendants was that all matters transpiring between anks not located within the territory assigned to the Fedral Reserve Bank of Atlanta (Sixth Federal Reserve Disict) were *res inter alios acta*, and therefore irrelevant and nmaterial.

The intervention was appropriate to the bill as amended. he disallowance of it and rejection of the evidence in suport of it, and of the bill as amended, were errors that afected the whole case.

Conclusion.

The Federal Reserve Board's propaganda claims that a urden of $135,000,000 per annum is imposed on business y exchange charges. This is a theoretical calculation of 10 nts per hundred dollars on the grand total of bank remitnces in the United States. It is wholly misleading because etween large financial centers omission of specific exchange harges is compensated by reciprocal service, and the expense

of accounting is saved in addition (App., 93). Since "fair exchange is no robbery," the great bulk of the service is fully compensated by set off between banks, while interest on the float taxes business substantially the same total amount as specific exchange charges would impose. But, if the figures correctly reflected the facts, they would but serve to increase the outrage involved in forcible destruction of these revenues. This outrage is decreased in amount, but aggravated in character when the net result is to maintain the equitable set off between the large banks in financial centers and deny, not only the profits on but reimbursement for actual cost of the service rendered by the country banks that cannot obtain the advantage of reciprocal service by reason of their isolation.

But isolation is not the only element that militates against reciprocal service between the outlying banks and banks in financial centers. There is the element of seasonal demands for money to move the enormous agricultural products of the West and South. During these seasonal demands the flow is all one way, whereas between the great cities there is a substantially uniform course in the transmission of funds back and forth.

There is a strange prejudice against paying 10 cents to a bank for transporting $100 across the country that does not exist with respect to other "common carriers" of funds. A charge by the express companies or the fee for a post-office money order will be paid as a matter of course; but payment for the identical service by a bank is sometimes resented. A moment's reflection ought to cause revision of this view (App., 89). If it be wise and lawful to remove the cost to business of transporting funds through banking

channels, the same policy applies to the other channels of such transportation. The latest official report of the Postmaster General shows that its receipts for transporting less than a billion and a quarter dollars during the fiscal year ending June 30, 1922, were $7,726,330 or more than 63 cents per $100, as contrasted with 10 cents per hundred commonly charged by banks, which transferred about one hundred times as much as the post-office did. To coerce this service by the banks is a plain violation of the Constitution. But we are told that the Federal Reserve Act provides for it and demands it, and this was the only reply before the court on the former appeal and is the only reply now.

Reviewing the record in perspective, the outstanding errors appear to be the misinterpretation of the Federal Reserve Act as related to exchange charges, and the rejection of the evidence of methods employed by the system in enforcing that interpretation throughout the country. The interpretation of the statute that forms the basis of the par clearance campaign convicts Congress of attempting to authorize domination of State banks over which it has no constitutional jurisdiction. A legitimate purpose within its power is obvious from the debates on the bill viz: to safeguard the expense of the Government in the administration of its fiscal system, and at the same time preserve the legitimate revenues of the banks in the matter of exchange on commercial transactions between themselves. The misinterpretation of the statute by the defendants manifolds the expense of the Reserve banks in making collections and destroys the legitimate exchange revenues on commercial transactions. The two interpretations are diametrically opposed. The one insisted on by plaintiffs accomplishes the purpose Congress had in

mind and preserves the validity of the act; the other contended for by defendants defeats that purpose and makes the act invalid.

Aware of the coercion that forced thousands of banks to give up their legitimate exchange revenues on commercial transactions during the two years preceding the filing of the bill in this case, plaintiffs sought injunctive relief against like coercion in their district *before the actual injury was suffered*. The defendants announced the purpose of adopting embarrassing, annoying, and expensive methods of collection to compel submission and cited the success of like methods in other districts. Those methods included accumulation of checks on non-par banks through the par list and payment thereof demanded in cash in Oregon, Washington, Colorado, Nebraska, Wisconsin, Michigan, Kentucky, Mississippi, Louisiana, and Texas. The variation of detail and amplification of these methods no less than the effrontery of these emissaries of the system, shock the moral sense. A casual reading of the testimony beginning on page 61 of the appendix discloses a persistent course of oppression that seems incredible in an institution created by our Government of laws—not men. The consistency of the methods over so wide a territory demonstrates that they originated at a common center. They are officially recognized, and even after their condemnation by this Honorable Court, the Controller of Collections of the Federal Reserve Bank of Chicago quotes the Counsel of the Federal Reserve Board, representing the whole system, as advising that the decision of this court in this case does not interfere with the check clearing functions of the Federal Reserve banks. Consequently the irregular methods of collection would be continued (App., 74-5).

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Were it not inherently obvious, it has been shown by proof, and by the admissions of the Federal Reserve Board, speaking for all the Federal Reserve banks, that without coercion—force—punitive legislation—or *vis major* of some type, universal par clearance cannot be established. If the defendants of record are sincere in declaring that coercion in any form is to be eschewed by them, then the grant of the relief sought by plaintiffs cannot interfere with their plans. From such outrages as are typically disclosed by the uncontradicted testimony of more than a score of banks in other districts these plaintiffs have convinced this court they are entitled to protection. Nay more, they are entitled to a decree that will prevent the possibility of such injuries. To that end they are forced a second time to seek relief in this Honorable Court. They humbly pray that this relief be now granted in terms that cannot be gainsaid or minimized; in terms that will vindicate the legislative branch of the Government from the unfounded charge of a surreptitious encroachment upon the constitutional rights of these creations of the States; in terms that will rebuke the arrogant assumption and unlawful oppression that has characterized the Federal Reserve Board in the past, and make a recurrence of such conditions impossible; in terms that will emancipate all banks both national and State, whether members or non-members, from a species of tyranny that threatens the usefulness if not the life of the great Federal System that Congress designed in the most constructive financial legislation ever enacted in the history of our Government. All banks should be free to adjust their exchange relations to their several situations. Congress has prescribed the maximum rate of one-tenth of one per cent which all banks will respect, either voluntarily or under the pressure of competi-

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tion. No other regulation or restriction is either wise or lawful. No bank ever has exacted or ever will charge exchange on Government checks.

Insisting upon the honesty of the direct purpose in Congress to minimize the expenses of the Government, when it prohibited the members to charge exchange against the Reserve banks, rather than the suggestion of a duplicitous and unconstitutional design to establish "universal par clearance;" emphasing the intention officially declared by the Federal Reserve Board to utilize this prohibition as a means of enforcing universal par clearance; citing the definite corporate resolutions of defendant Reserve bank expressing a purpose to co-operate in these plans of the Federal Reserve Board to establish universal par clearance; adverting to the official writings of the officers of defendant bank in carrying out the purposes of these resolutions; recalling the admitted methods employed with success and approval in enforcing these plans throughout the system; and, finally, relying upon the former decision of this honorable court settling the principles applicable to these indisputable facts, appellants insist that a reversal of the judgment and decree appealed from is demanded.

Respectfully submitted,

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APPENDIX.

Material Allegations of the Bill and Answers Thereto.

Tr., 6, et seq.

The allegations of the bill and amendments are voluminous in matters of inducement and history. This was due to the novelty of the case. Issue has been joined on the pleadings on very few points and these are set forth in the following paragraphs. All the other paragraphs are either admitted or conceded to be academic, and therefore immaterial.

Paragraph 17 (Tr., 6).

17. In a published statement from said defendant Wellborn it is laimed by him that of the 30,260 banks in the United States 26,315 re now remitting at par for checks sent through the mails. Of this umber more than 7,500 are national banks who are compulsory nembers of the Federal Reserve system hereinafter described and ave no discretion in the premises. The others have submitted to his plan either through becoming members or by reason of the oercive measures to enforce submission hereinafter described. In iew of the large number of State banks which have thus apparently urrendered at discretion to the demands of these powerful financial nstitutions, said defendant Wellborn no doubt felt justified in preicting that the necessity to employ coercive measures in the Sixth 'ederal Reserve District would be obviated. Unless protected by the ourts, the country banks in Georgia will be driven either to submit r go out of business, for the reasons herein stated. Hence the proection of the courts is now and hereby invoked.

Answer to Paragraph 17 (Tr., 31).

17-A. Defendants admit that, at the time said bill was filed herein, it of approximately 30,260 banks in the United States 26,315 were emitting to the Federal Reserve banks at par for checks through he mails, and further admit that the defendant Wellborn had so ated. They further admit that of said 26,315 banks, 7,500 or more re national banks. They say further that on January 1, 1921, ere were in the United States approximately 30,523 banks, and at of that number, on said last-mentioned date, all but 1,755 of id banks were remitting to the Federal Reserve banks at par. ith the exception of those allegations which are specifically admitd in this paragraph of the answer, paragraph 17 of the bill of comaint contains only statements of conclusions and therefore requires further answer. Defendants specifically deny, however, that any ercive measures have been used to compel any bank to become a

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member of the Federal Reserve system or to compel any bank to submit to any plan whatsoever.

COMMENT.

The statistics as to membership in the system set forth in this paragraph are taken from defendant's literature and are admitted, but the allegation that affiliation with the system by some of the State banks was the result of coercion is denied. This allegation and denial is not limited to the Sixth District, but embraces the whole system of twelve districts. Proof of surrender under coercion will be found in the excerpts from letters in evidence found in Appendix pp. 40 *et seq.*

Proof of surrender under coercion by banks in other districts and strictly in support of the allegation as to the whole system was tendered and rejected. (App. pp. 61 *et seq.*)

Proof of resistance to coercion is found in the record, and abstracted in Appendix pp. 40, 42, 45.

Proof to the same effect with respect to banks in other districts and strictly in support of the allegations as to the whole system was tendered and rejected. (App. pp. 61 *et seq.*)

It is submitted that the proof admitted carries plaintiffs' burden on this issue, under the general rule that two witnesses are ordinarily sufficient to establish an allegation, especially in the absence of rebuttal. It is argued in the brief, that under the issue joined, the evidence outside the district was erroneously rejected.

If there was no evidence in the case except the minutes of defendant bank and the letters of Adelson, the proof of coercive intention is complete. He who runs as he reads these documents must see the purpose. Until this bill was filed, instead of concealing this purpose, it was expressed as a boast. Note the current reports proudly reporting new accessions since last report, yet deprecating the laggard steps of the Atlanta District in comparison with the other districts.

Trace the movement through the board of directors. On November 14, 1919, the board voted to request the chairman to call *a special meeting* following the anticipated return of Governor Wellborn from the conference of governors, in order that there might be discussed the question of exchange *and of getting the entire district on a par clearing basis.* This special meeting appears to have been held on December 11, and Mr. Adelson's report to the board at that meeting showed how tardy the Sixth District was, in that it had only 778 par-remitting banks in the district out of a total of 2,018, and the number remitting at par included all members, which on December 31, 1919, embraced only 64 State banks.

On motion, the officers of the bank were to be authorized to *proceed with the work and incur any necessary expense,* and a committee was ordered to prepare appropriate resolutions, which were prepared and duly adopted. These resolutions recited the rapid strides made in other districts in *putting* their respective districts upon a par basis, and that the Atlanta bank had not kept pace with these rapid

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strides in *putting par clearance into effect*. The sentiment of the governors, at the recent conference from which Governor Wellborn had just returned, was declared to be that the entire country should be *put* on a par-clearance basis. Therefore the board formally instructed the officers of the bank to *adopt such plans and incur any necessary expense in order to effectively arrange for par clearance*. Every member of the board voted in favor of this resolution. As soon as the physical preparation of the documents to be employed in *putting* par clearance into effect could be prepared and approved, the deputy governor, who was, according to the testimony of Governor Wellborn, appointed to take charge of this matter, got very busy. Annoying, embarrassing, and expensive methods of collection were to be put into effect solely and alone with respect to banks that refused to remit at par. Can it be doubted that the purpose was to have these banks cease their refusal to remit at par? Can it be doubted that it was supposed that these embarrassing, annoying, and expensive methods would compel these banks to agree to remit at par? Does it require any argument to show the purpose was *not* to collect checks, but to *put into effect par clearance?*

The evidence shows that no checks, which alone could form the instrument of annoying, embarrassing, and expensive methods of collection, came to the Federal Reserve bank unless the drawee bank's name was upon the par list. This was clearly understood, and the ultimate threat of Adelson was to arbitrarily place the name of a resisting bank on the par list for the very purpose of supplying this weapon.

It would be a needless waste of time to reiterate here the statements of Adelson in the letters that have been printed for the convenience of the court, wherein, as special officer in charge, he was endeavoring to carry out the instruction of the board to *put par clearance into effect*.

The almost tearful expressions of regret that the officers would be *compelled* to do these things reinforce the conclusion that they knew full well the intolerable situation that would be thereby produced. It is mere trifling with the court to insist that the only motive involved in these methods was to collect the proceeds of the check. The object and purpose to take advantage of the intolerable situation that would be produced by procuring possession of a large percentage of all checks drawn on a dissenting bank for presentation at the counter, and the demand of cash in payment thereof, is so apparent, so obvious, so indisputable, in the contemplation of any impartial mind seeking the truth, that any argument to support it merely tends to becloud the fact.

Paragraph 43 (Tr., 14).

43. (Matters of law.) Petitioners deny the jurisdiction of the defendant Reserve Bank in its corporate capacity, and of each individual defendant under the cover of their official connection with it, over any bank created by the sovereign State of Georgia, which has not voluntarily submitted to said jurisdiction and less than one in

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fifty of such State banks outside of the large cities in the State have seen fit to take that step. There is very little inducement to join it by a bank with any choice in view of the policy of its management, which has transferred it into a money-making institution, entering into competition with its members on whose capital it operates. Petitioners are informed and charge the fact to be that it handles direct drafts with bills of lading attached and demands checks from drawees certified by their individual banks to pay for same, and requires its members to carry all reserves with it, thereby depriving them of all interest on balances. As a result of these practices, petitioners are informed and charge the fact to be that defendant Reserve Bank made over 100 per cent on the capital furnished by its members during the year 1919 and its statement shows average earnings of about 33⅓ per cent per annum since its organization, clear of all expenses of its operation (the amount of which expenses does not appear in its statements), of which earnings only 6 per cent per annum is distributed to its members who furnish the capital. Regardless of the construction or interpretation of the Federal Reserve Act, petitioners are advised by counsel, and therefore allege, that Congress has no power, even by a direct, explicit, and mandatory enactment, to coerce them or other State banks in like condition, against their will, to submit to the jurisdiction of defendant Reserve Bank, either as members or non-member banks. There is no warrant in law for perverting the Federal Reserve Act into an instrument of autocratic tyranny to compel petitioners and other banks created by the State of Georgia to sacrifice their charter rights and legitimate revenues to fatten the swollen profits already piling up in the Federal Reserve bank, which at present are about one and three-eighths times as great as their aggregate capital stock.

Answer to Paragraph 43 (Tr., 35).

43-A. Defendants admit that the profits of the defendant Reserve Bank for the year 1919 amounted to more than 100 per cent of its paid-in capital, and that its earnings since the date of organization have averaged 33⅓ per cent of its paid-in capital. With the exception of those allegations which have been specifically admitted in this paragraph of the answer, paragraph 43 of the bill of complaint contains only statements of conclusions and therefore requires no further answer. Except as heretofore in this paragraph of the answer admitted, defendants deny any proper allegation of fact in said paragraph contained, if any such allegations there be in said paragraph.

Paragraph 44 (Tr., 15).

44. Nevertheless, petitioners allege that said individual defendants, under the cloak of their official connection with the defendant Reserve Bank, threaten and intend to use the great resources of said Reserve Bank to compel petitioners and other banks in like condition to either join said Federal Reserve bank, or else have their business so interfered with and their revenues so depleted by the embarrassing, annoying, and expensive methods now in preparation for

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exploit upon them as to drive them out of business altogether. Petitioners have hereinbefore fully shown how and why a small country bank in a sparsely settled and remote agricultural section of the State cannot meet the requirements necessary to membership in the Federal Reserve Bank, nor can they deplete their revenues by remitting at par and continue the successful prosecution of their small, but useful and necessary, business functions in their respective communities.

Answer to Paragraph 44 (Tr., 35).

44-A. Defendants deny each and every allegation contained in paragraph 44 of the bill of complaint.

COMMENT.

Now that the Supreme Court has qualified the right to present checks and demand cash under all circumstances, the allegations of paragraphs 43 and 44 are proven beyond controversy by the records of defendants in evidence.

Paragraph 45 (Tr., 15).

45. Whether or not the defendant Reserve Bank will accept checks at par drawn on banks not holding membership in it is optional with it and not mandatory. The said bank has been in operation more than five years, and not until recently has it undertaken to handle checks on non-members at par, unless the drawee bank was located at a financial center of such size as to make it what is known as a "par point."

Answer to Paragraph 45 (Tr., 35).

45-A. Defendants are advised that the first sentence in paragraph 45 is a statement of a conclusion, and for that reason the same requires no answer. Answering the last sentence of paragraph 45, defendants say that the same is immaterial and irrelevant. Defendants admit that the defendant Reserve Bank has been in operation since November 16, 1914, and that while it is true that only within a comparatively recent time has the defendant Reserve Bank undertaken to make collection of all checks drawn on all banks in the Sixth Federal Reserve District, yet the service of collecting all such checks has been in contemplation since the organization of the bank. Defendants say that the fact that the defendant bank has not heretofore performed this service for the members of the Federal Reserve system cannot be urged in bar of the right to perform that service at the present time.

Paragraph 46 (Tr., 15).

46. Petitioners are informed and believe, and so charge, that one of the embarrassing, annoying, and expensive expedients to which the defendants intend to resort is to accumulate checks drawn on pe-

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titioners or other banks in like condition in the State of Georgia
the aggregate thereof is a large amount and then send a special
senger to the counter of the bank on which said checks are dr
and demand payment thereof in currency over the counter. S
a course would inevitably drive a small country bank out of b
ness. Without notice as to when such checks will be presented
to the amount thereof, it would be necessary for such bank to
an amount of money in its vault large enough to meet any
gency of this kind and would destroy its capacity to lend out
funds in regular course of business, and therefore cause the los
the interest revenues now derived from such loans. In additio
this, the appearance in a small village, or town, of a stranger and
known person in an automobile, or other conveyance, and his
sequent withdrawal under the eyes of the attendant and cur
crowd of country people of large sums of currency from the
bank, the same to be carried away in the presence, perhaps, of ma
of the depositors of said bank, is calculated to, and in all probabi
would, result in an immediate run on said bank that would promp
put it out of business. The reputation of a bank is exceedingly s
sitive, and any criticism or suspicion of it, whether well o
founded, speedily enlarges into distrust, condemnation, and ruin

Answer to Paragraph 46 (Tr., 35).

46-A. Answering paragraph 46 of said bill, defendants deny t
they had in contemplation the accumulation of checks until the a
gregate reached a large amount before presentation for payment, a
deny that the conclusions of the plaintiffs as embodied in said pa
graph are warranted by any averment of ultimate fact in said p
contained. Defendants deny and disclaim any intention to in
any of the plaintiff banks and deny all other allegations contai
in said paragraph.

Paragraph 47 (Tr., 16).

47. Petitioners allege that such method is useless, tyrannical, ul
vires the charter of said defendant Reserve Bank, and the threat
employ such a method petitioners allege to be a perversion, if no
prostitution, of the functions of such a great institution. When su
methods are employed for the purpose of coercing and oppress
petitioners and other banks in like condition created by the St
of Georgia, it amounts to an outrageous invasion of the rights
your petitioners granted to them under the charter of the great St
of Georgia.

Answer to Paragraph 47 (Tr., 36).

47-A. Answering paragraph 47 of said bill, defendants say t
said paragraph contains no allegations of fact, but only statements
groundless conclusions of the pleader. Defendants, however, in s
swer thereto, deny the charges therein made, and say that said pa

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ph is merely an unwarranted and uncalled-for attack upon the de-dants, unsupported by any allegations in said bill contained.

COMMENT.

The allegations of paragraphs 45, 46, and 47, in so far as matters law are concerned, are covered by the argument as to the true erpretation of section 13. The matters of fact therein stated are tinent and controlling, under the decision of the Supreme Court, d are supported by all the evidence in the case illustrating condi-ns as they existed when the bill was filed. If defendants have re-ted since, the act of repentance demonstrates the original offense.

Paragraph 48 (Tr., 16).

48. Nevertheless, the individual defendants freely admit that this thod has been employed in other States to force unwilling State nks into line, and in view of their letter of December 23, petition-charge that they expect to use this method on petitioners and er banks in like condition in Georgia, unless restrained from ing so by the strong arm of a court of equity.

Answer to Paragraph 48 (Tr., 36).

48-A. Defendants deny each and every allegation contained in ragraph 48 of the bill of complaint. They deny that they have contemplation, or hold in intendment, anything except the col-tion of checks in a perfectly lawful and legal manner, by pre-tation for payment regularly and without accumulation, at the unter of a bank which does not desire to remit at par, upon pre-tation for payment through the mails by the defendant Reserve Bank.

COMMENT.

That Adelson's intentions were the intentions of the bank itself established by Governor Wellborn's testimony while under exami-tion in open court. His evidence is that when the letter of Decem-r 23, 1919, was sent out the defendants were prepared to go ahead d put in par clearance; that Adelson was appointed to take charge putting in par clearance; and he (Governor Wellborn) would k up anything that Adelson did. Adelson warned the outstand-g banks what to expect. That his threats were successful was monstrated to him almost every day. Mr. McCord understood the rce of the plan. The facts thus established, without more, prove laintiffs' case.

Paragraph 49 (Tr., 16).

49. Another embarrassing, annoying, and expensive method hich petitioners are informed and allege on information and be-f that defendants expect to employ, as stated in said letter, is to

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hire a special agent in each town where petitioners or other ... banks in a like town do business, and mail checks on such ... bank to said agent with instructions that he present same at ... counter of the bank upon which same is drawn and demand ... ment in currency. Since this currency would necessarily have ... be transmitted back to the defendant Reserve Bank and the ... thereof paid by it, petitioners charge that such a method is employ... for an ulterior purpose rather than in good faith for the purpose ... collecting said checks, and petitioners allege on information and ... lief, and from the facts hereinbefore set forth, that said ulterior ... pose is to coerce petitioners and other banks in like condition to ... to the will of defendants in the matter of remitting at par to ... their daily letters and ultimately to coerce petitioners and ... banks in like situation to either join said Federal Reserve Bank ... maintain a clearing deposit account with said bank, as hereinbefore ... fully explained. The evils of such a method of collecting ... differ only in degree from those set forth in a preceding paragraph ... where said collection is made by a special messenger in automobiles ... or other conveyances. The effect upon the constant maintenance ... of cash in vault to meet liabilities and the consequent material ... pletion of the reserves of petitioners in financial centers would be ... same.

Answer to Paragraph 49 (Tr., 36).

49-A. *Defendants admit* that in order to collect checks on ... member banks which had declined to remit at par for checks drawn ... upon such banks, and in the hands of defendant Federal Reserve ... Bank for collection, *said defendant bank had intended,* in some ... stances, *to employ agents* in certain towns where such non-member ... banks were respectively located and had intended, from day to day ... in regular course of business, to mail checks so drawn on said non-... member banks to such agents, *with instructions to present the same ... the counters of the respective drawee banks for payment,* and that ... *the defendant may in the future appoint agents* for the same pur... pose and mail checks to such agents *with similar instructions.* Such ... checks, if so sent to such agents, will be sent promptly upon receipt ... thereof, and in regular course of business, without accumulation. ... Defendants deny, however, that in thus planning for the appoint... ment of or the mailing of such checks to such agents the defendant ... Reserve Bank or any of the defendants had any purpose or intent ... *other than to collect the said checks* received by the defendant bank ... for collection and in regular course of business. Should the said ... defendant bank in the future appoint such agents the appointment ... will be solely and only in line with the *bona fide* intent to make such ... collection in regular course of business. Defendants also deny that ... the effect upon any drawee bank of such a course of dealing would ... be as charged in said paragraph. With the exception of those al... legations which have been specifically admitted or denied in this ... paragraph of the answer, paragraph 49 of the bill of complaint con... tains only statements of conclusions and therefore requires no fur... ther answer.

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Paragraph 50 (Tr., 17).

50. Another embarrassing, annoying, and expensive method which petitioners are informed and allege on information and belief that the defendants expect to employ in their effort to coerce submission of petitioners and other banks in like condition to submit to the jurisdiction of said Federal Reserve bank is the transmission of said checks to the local postmaster or through the express companies for collection in currency over the counters of the bank on which they are drawn. Since the rates for such collections by express or post-office remittance are equal to or greater than the rate of exchange now charged on remittances to cover such checks, the employment of such a method petitioners allege to be in bad faith. The evils of having checks thus presented and paid in currency would be as great under this method as under either of the others and would materially interfere with the successful prosecution of the legitimate business of petitioners and other banks in like condition, which they are now expressly authorized to do under their several charters from the State of Georgia.

Answer to Paragraph 50 (Tr., 37).

50-A. *Defendants admit* that, in order to collect checks on non-member banks in its hands for collection and drawn upon banks which have declined to remit therefor at par to the defendant Reserve Bank, said defendant Reserve Bank has in some instances *transmitted checks* drawn on said non-member banks *to local express companies with instructions to present at the respective counters of the drawee banks for payment*, and that the defendant Federal Reserve Bank *may in the future continue to so transmit* such checks *with similar instructions*. Defendants deny, however, that in the transmission of checks as aforesaid the defendant Federal Reserve Bank or any of the defendants had or will have *any purpose other than to collect said checks*. In cases where such checks have been so presented for payment through express companies, they have been presented in regular course of business and without accumulation or intent to accumulate the same for any ulterior purpose, and if in the future such checks should be so presented they will be presented in regular course of business, promptly, as received by the defendant Reserve Bank for collection, and without accumulation. With the exception of those allegations which have been specifically admitted or denied in this paragraph of the answer, paragraph 50 of the bill of complaint contains only statements of conclusions and therefore requires no further answer.

Paragraph 51 (Tr., 17).

51. There may be other methods of oppression in preparation by defendants, designed to force submission of petitioners and other State banks of like condition to their will, of which petitioners are

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not informed, but petitioners allege that any method which disr
the orderly course of business involved in the collection of che
through the mails would necessarily be ruinous to the busines
petitioners and other banks in like condition, if persisted in,
would result in either the submission of petitioners or the aband
ment of their business altogether under their State charters. In
dition to this, the economic results of such method of doing busi
would be a tremendous injury to all the business interests in
State, including the business of petitioners and other banks in
situation. It is well known, and the court will no doubt take
dicial cognizance of the fact, that the relation of actual currency
bank transactions in the country as a whole is about one to twen
and any scheme which interferes with the orderly and contin
course of such dealings clogs the channels of commerce, increas
the risk of doing business by handling large amounts of curre
and added expense of insurance against burglary, theft, and def
cation, to say nothing of the loss of revenue caused by the disturb
of the ordinary reserves now necessary to meet the requirement
the law regulating State banks and the necessities of the busines
the banks themselves.

Answer to Paragraph 51 (Tr., 37).

51-A. Defendants say, in answer to paragraph 51 of said bill, t
the same consists wholly of conclusions of the plaintiffs, and co
tains no averment of pertinent or relevant facts which can be a
swered in such a way as to join issue thereon. Defendants say th
said paragraph is wholly immaterial, irrelevant, and impertinent
any issue attempted to be made by said bill, and that the conclusio
therein contained are unsupported by any allegations of fact an
where in said bill contained. If it should be considered, howeve
that said paragraph contains any proper or specific averment of a
threatened or unlawful act, defendants deny the same and each a
every part thereof.

Paragraph 52 (Tr., 18).

52. Petitioners allege that the adoption of any of the metho
hereinbefore described, or any like methods, for the purpose of c
ercing petitioners or other banks in like situation to relinquish th
revenue accruing to them by exchange on remittance would oper
to deprive petitioners and other banks in like condition of the
property without due process of law, in violation of that clause of th
Fifth Amendment of the Constitution of the United States whic
provides that no person shall be deprived of life, liberty, or proper
without due process of law.

Answer to Paragraph 52 (Tr., 37).

52-A. Paragraph 52 of the bill of complaint contains only sta
ments of conclusions and therefore requires no answer. Defendan
deny, however, that any method of collecting checks which any

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he defendants contemplate or which is properly charged in the bill f complaint is or would be an infringement of any constitutional, gal, equitable, or other right of the plaintiffs.

Paragraph 53 (Tr., 18).

53. Petitioners allege that, relatively speaking, the service of these nall country banks to their respective communities is as necessary nd important to those communities as are the services of larger in- itutions in populous cities, including the Federal Reserve system self, and the public policy of the State of Georgia, as found in its onstitution and laws, encourages the creation and activities of said nall country banks. Of the 792 banks in the State of Georgia, pe- itioners are informed and believe that 610 are chartered by the State f Georgia, the others being national banks. Of the 610 State banks, etitioners are informed 510 are located outside of the large cities of he State and come within the classification of country banks. Of he 510 country banks, petitioners are informed that 224 have a apital stock of $20,000 or less, and not one of these banks could meet he conditions necessary to membership in the Federal Reserve Bank ithout the increase of its capital stock to a point beyond which it ould earn taxes and dividends thereon, and such increase would n many cases be impossible and the additional stock could not be old. On the other hand, petitioners are informed and believe, and o allege, that none of said small banks could successfully continue n business without the benefit of the compensation for their services or remittance covering checks, as hereinbefore explained. Conse- uently, if the coercive schemes of the defendant are permitted to ructify, these small but useful and necessary State institutions will ecessarily be driven out of business and the public policy, to say othing of the local self-government, of the great State of Georgia ill be outraged and overridden by the autocratic tyranny proposed o be exercised by the defendants hereto, operating in the name, but utside the power, of the defendant Reserve Bank created by Con- ress for a purpose entirely foreign to any such objects and purposes.

Answer to Paragraph 53 (Tr., 38).

53-A. Defendants are without knowledge as to the number of anks in the State of Georgia, and as to the number of banks which ave been chartered by the State of Georgia, and as to the number f banks in Georgia located outside of large cities, and as to the mount of capital stock which banks in Georgia actually have or ould sell or could profitably employ. With the exception of those llegations as to which defendants have stated in this paragraph of he answer that they are without knowledge, paragraph 53 of the bill f complaint contains only statements of conclusions and therefore equires no further answer. Defendants deny, however, each and very allegation of said paragraph with the exception of those allega- ions as to which defendants have stated in this paragraph of the nswer that they are without knowledge.

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Paragraph 54 (Tr., 18).

54. Upon the receipt by petitioners and other banks in like si
ation in Georgia of said letter, Exhibit B, and its inclosures, all t
recipients declined to accede to the demand of defendants to re
at par, and a committee was appointed to confer with the defend
on behalf of petitioners and other banks in like situation in an eff
to accommodate the situation and persuade the defendants to rec
from their effort to compel compliance with their demands. T
committee conferred with the individual defendants herein nam
on more than one occasion, and was informed on each occasion t
the defendants intended to insist upon remitting at par or else wo
employ methods to compel such course on the part of petitioners
other banks in like situation; and stated that they were prepari
their plans of action and would put them in operation as soon as th
were completed.

Answer to Paragraph 54 (Tr., 38).

54-A. Defendants admit that plaintiffs and most of the other ban
to which the letter, Exhibit "B," was sent by the defendant Fede
Reserve Bank are not remitting at par to the defendant Federal R
serve Bank, and that defendants have conferred with a committe
Georgia bankers with regard to par collection. Except as herein
fore specifically admitted in this paragraph of the answer, defend
deny each and every allegation contained in paragraph 54 of the b
of complaint.

Paragraph 55 (Tr., 19).

55. Petitioners are informed and believe, and so charge, that s
individual defendants are now actively engaged in the prepara
and perfection of plans which will put in operation said measu
hereinbefore described, or else other measures of like import, wi
the avowed object of compelling petitioners and other banks in li
situation to accede to said demand. Said defendant—Bell, cash
of the defendant Reserve Bank—delivered an address, as petitio
are informed, before the Rotary Club of Atlanta on the 5th day
January, 1920, in which he said "that *the charging of exchange*
checks and other instruments sent to various banks for collection
vice which should be eradicated." And the said Bell, in co-operat
with the other individual defendants named, is preparing measu
to compel petitioners and other banks in like situation to forego s
charges for exchange, and the individual defendants advise p
tioners and the committee of country bankers representing petitio
and other banks in like situation that as soon as said plans are re
for operation they will be put into effect.

Answer to Paragraph 55 (Tr., 38).

55-A. *Defendants admit* that the defendant M. W. Bell, in an
dress before the Rotary Club of Atlanta on the 5th day of Janu

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1920, used the words which appear in quotation-marks in paragraph 55 of the bill of complaint. Except as hereinbefore specifically admitted, defendants deny each and every allegation of paragraph 55 of the bill of complaint.

Paragraph 56 (Tr., 19).

56. Petitioners allege that said efforts to coerce petitioners and other banks in like situations, through the instrumentality of said defendant Reserve Bank, are illegal, oppressive, and unwarranted by the charter powers and functions of said bank, and that the efforts of said individual defendants in that direction are chargeable to them as individuals and constitute an invasion of petitioners' rights and the rights of other banks in like situation, for the reasons hereinbefore fully stated. And it is necessary for the protection of said rights that said defendant Reserve Bank in its corporate capacity and said individual defendants in their individual capacities should be restrained by the orders of this court from further prosecution of their plans to forcibly and illegally coerce petitioners and other banks in like situation to accede to their demands or else suffer serious embarrassment, annoyance, and expense in the conduct of their business.

Answer to Paragraph 56 (Tr., 38).

56-A. Paragraph 56 of the bill of complaint contains only statements of conclusions and therefore requires no answer. Defendants deny, however, each and every allegation thereof which may be considered as containing any averment of issuable fact.

COMMENT.

The foregoing paragraphs allege intention to accumulate checks on petitioners in large aggregate amounts and through messengers or other agencies present them at the tellers' windows, and demand payment in cash to the injury of the local banking resources and reputation of the banks. The allegation is the existence of an intention or purpose *at the time the bill was filed.* An open threat by defendant of intention to "adopt other methods of collection that would prove embarrassing, annoying and expensive" to petitioners had been officially sent out by registered mail to the original plaintiffs, and more than a thousand other non-par banks in the district (*post*, 20). That threat was enclosed with an official circular of the Federal Reserve Board stating that "the action of the various Federal Reserve banks in extending their par lists has met with the cordial approval of the Federal Reserve Board" (*post*, 18). Defendant's communication directs attention to this enclosure in order that plaintiffs might fully understand the necessity for the efforts of the Federal Reserve banks (plural) towards establishing a national par list. The statistics showing the progress of the campaign as a whole are set forth to the effect that 16,196 non-member banks were on the par lists, and in justice to them and the 8,955 member banks, defendant must begin to handle all checks drawn on any bank in the United

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States. Clearly, the plans were not restricted to the Sixth District they were nation-wide. The threatening language as to unusual methods of collection was general as to detail but specific as to character, viz., embarrassing, annoying and expensive to petitioners. Petitioners' allegations describe some of the methods employed in other districts in extending their par lists that had met with the cordial approval of the Federal Reserve Board—the supreme central authority over all the Reserve Banks—and charged defendants with intention to employ the same methods. The rejected evidence shows that in November, 1919, less than sixty days before this threat was made representatives of the Federal Reserve Bank of Kansas City went as special messengers to the counter of Cones State Bank of Pierce, Nebraska, and presented a large number of checks aggregating an amount in excess of the cash actually in (or legally required to be in) the vaults of the bank and demanded their payment in currency. A solvent draft on the reserve deposits of the bank was tendered for the full amount demanded, and was refused, not on the ground that it was not good, but acceptance of it was offered if the drawee bank would sign a par remittance agreement. That being refused, time was requested to go to a neighboring bank and get the draft cashed and only five minutes were allowed for that purpose, but it was obtained and the checks paid. Some of them were dated three weeks prior to presentation. The cash thus collected was made up into large stacks of currency and silver and placed in valises in the presence of customers of the bank, and one of its depositors became so alarmed he threatened to withdraw his balance on deposit. (App. pp. 77, 78).

Proof of these facts was tendered and rejected on the trial.

Amendment to the Prayers of the Original Bill.

(Tr., 50.)

Now come the complainants in the above-stated case, by their solicitors, and amend the prayers of the original bill therein by adding the following additional prayers, to wit:

(7) That the defendants be permanently enjoined from publishing the name of any non-member bank that does not maintain with the Federal Reserve bank of its district a balance sufficient to offset the items in transit held for its account by the Federal Reserve bank on the so-called par lists of the Federal Reserve bank in the Sixth District, unless and until such non-member bank has given its consent to such publication.

(8) That the defendants be permanently enjoined from furnishing the names of any non-member bank in the Sixth Federal Reserve District that does not maintain with the Federal Reserve bank of its district a balance sufficient to offset the items in transit held for its account by the Federal Reserve bank to any Federal Reserve bank in any other district or to the Federal Reserve Board a

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Washington, D. C., for the purpose of having same published on the so-called par list of any Federal Reserve bank, unless and until such non-member bank has given its assent to such use of its name.

(9) That the defendants be permanently enjoined from continuing the publication or authorizing any other Federal Reserve bank or the Federal Reserve Board to continue the publication on any so-called par list of the name of any non-member bank that does not maintain with the Federal Reserve bank of its district a balance sufficient to offset the items in transit held for its account by the Federal Reserve bank, unless such non-member bank has previously given its consent to such use of its name and has not lawfully withdrawn or does not lawfully withdraw its consent to such continued use of its name.

(10) That the defendants be permanently enjoined from publishing or using the names of such non-member banks contrary to the injunction prayed for in the three preceding prayers with respect to any published list whatsoever that is designed to accomplish the same uses and purposes as the current so-called par lists, regardless of the name or names employed to designate such lists.

(11) That the defendant Federal Reserve Bank, its officers and agents, be permanently enjoined from accepting or receiving for collection or otherwise any check on any non-member bank that does not maintain with the Federal Reserve bank of its district a balance sufficient to offset the items in transit held for its account by the Federal Reserve bank, and that has not agreed and does not continue to agree to remit the proceeds of any such check without charge for such remittance of the proceeds thereof, whether such charge be made under the description of exchange or otherwise.

(12) That the defendants be permanently enjoined from returning as dishonored any check on such non-member banks payment of which was refused solely because lawful exchange charges for remittance were not allowed.

Decree.

(Tr., 351.)

This cause came on for final hearing on the bill of complaint and the amendments thereto, the answer of the defendants and the amendments thereto, upon papers heretofore read, and former orders and decrees made herein, upon evidence submitted in open court by the plaintiffs and the defendants respectively, and upon argument of counsel,

Upon consideration whereof the court being fully advised in the premises,

It is considered, ordered, adjudged and decreed, that under sections 13 and 16 of the Federal Reserve Act, the defendant, the Federal Reserve Bank of Atlanta, is empowered to accept any and all checks payable on presentation, when deposited with it for collection,

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which checks, thus received, must be collected at par by the defe
ant, the Federal Reserve Bank of Atlanta, without deduction for
called exchange or otherwise.

It is further considered, ordered, adjudged and decreed, that t
defendant, the Federal Reserve Bank of Atlanta, in discharging
duty with respect to the collection of checks deposited with it
with respect to performing the functions of a clearing house, is e
powered to adopt any reasonable measure designed to accomp
these purposes, and may send such checks to the drawee bank
rectly for remittance through the mails without cost of exchan
and if the drawee bank refuses to remit without deduction for
cost of exchange, it is in the power of the defendant, the Federal
serve Bank of Atlanta, to employ any proper instrumentality
agency to collect the checks from the drawee bank, and it may le
mately pay the necessary cost of this service.

It is further considered, ordered, adjudged and decreed, that in
exercise by the defendant, the Federal Reserve Bank of Atlanta, of
clearing house functions, the process of the daily collection of che
is not rendered unlawful because of the fact that of the checks h
dled two or more of them may be drawn on the same bank.

It is further considered, ordered, adjudged and decreed, that in
inauguration by the defendant, the Federal Reserve Bank of Atla
of its par clearance system the said defendant bank was not insp
by any ulterior purpose to coerce or injure any non-member ba
which refused to remit at par.

It is further considered, ordered, adjudged and decreed, that
defendant, the Federal Reserve Bank of Atlanta, in the inaugu
tion of its par clearance system, did not intend to accumulate che
upon country or non-member banks until such checks reach a la
amount and then cause them to be presented for payment over
counter, so as to compel the plaintiffs to maintain so much cash
their vaults as to drive them out of business, as an alternative
agreeing to remit at par.

It is further considered, ordered, adjudged and decreed, that
evidence submitted by plaintiffs is insufficient to sustain any cha
in the bill that the defendant, the Federal Reserve Bank of Atla
was acting illegally or exercising any right which it had so as to
press or injure the plaintiff banks.

It is further considered, ordered, adjudged and decreed, that i
a legitimate feature of the clearing house functions of the defe
ant, the Federal Reserve Bank of Atlanta, to publish a par cle
ance list, that is, a list of banks checks drawn on which will be
lected at par by the Federal Reserve banks, and that in the pu
cation of such lists the defendant, the Federal Reserve Bank of
lanta, may properly enter thereon the names of towns or cities, w
a representation that the defendant bank will undertake to col
at par checks drawn on any bank (member or non-member) in su
town or city.

It is further considered, ordered, adjudged and decreed, that in
much as a conclusion may be drawn from the appearance of a ban
name on the par list that it agrees to remit at par, or has agreed

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nter the par clearance system, the defendant, the Federal Reserve ank of Atlanta, its officers, servants and agents, be and they are ereby enjoined and restrained from publishing, upon any par list sued or to be issued by the said defendant, the Federal Reserve ank of Atlanta, *the name* of any non-member bank being a plain- ff in this cause unless such non-member bank consents or has con- nted to remit at par.

It is further considered, ordered, adjudged and decreed, that, ex- pt for the injunction granted in favor of the plaintiffs in the pre- ding paragraph of this decree, said plaintiffs are not entitled to an injunction for any other matter or thing complained of against the fendants in the bill and its amendments, and relative to all such atters an injunction is denied.

It is further considered, ordered, adjudged and decreed, that the xable costs in this case be equally divided between the plaintiffs nd the defendants.

It is further considered, ordered, adjudged and decreed, that the mporary restraining order heretofore granted in this cause is dis- lved.

This 25th day of March, 1922.

Exhibit A to the Bill.

(Tr., 74.)

FEDERAL RESERVE BOARD

WASHINGTON

December 11, 1919.

ubject: Questions of Law and Policy Involved in Matter of Collecting all Checks at Par.

EAR SIR:

In view of complaints which are being made from time to time oncerning the policy of Federal Reserve Banks in collecting checks n all points in their respective districts at par, there is enclosed for our information a copy of a letter which was sent to a protesting on-member bank in one of the districts, which defines the questions f law and policy involved.

Very truly yours,

——— ———,
Governor.

To Chairmen and Governors of all F. R. Banks.

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FEDERAL RESERVE BOARD

WASHINGTON

DEAR SIR:

Receipt is acknowledged of your letter of the —— in which y protest against the policy which has been adopted by the Federal R serve Banks with the approval of the Federal Reserve Board in t matter of the collection of checks which are received by Federal R serve Banks from their member banks or from non-member ba which maintain clearing or collection accounts with them.

The Board's action is based upon its conception of the very c dent purposes of the Federal Reserve Act. Section 13 of the A begins as follows: "Any Federal Reserve Bank may receive fr any of its member banks, and from the United States, deposits current funds in lawful money, national bank notes, Federal R serve notes, or checks, and drafts, payable upon presentation, a also for collection, maturing notes and bills." Even though t Federal Reserve Board has heretofore ruled that the permiss "may" as used in the foregoing paragraph should not be constru to mean the mandatory "shall," nevertheless it is clear that a Fe eral Reserve Bank in order to do any business whatever must exe cise some of the permissive powers authorized by law. It would impossible otherwise for a Federal Reserve Bank to afford to its me ber banks many of the privileges which the law clearly contempla and to which the member banks are clearly entitled. But indepe ently of a discussion of this phase of the situation, it seems to t Board that doubts upon this question are resolved upon a consid tion of the provisions of Section 16. "Every Federal Reserve Ba shall receive on deposit at par from member banks or from Fede Reserve Banks checks and drafts drawn upon any of its deposito In this case, the obligatory "shall" is used so that there is no opti in the Federal Reserve Bank so far as checks and drafts upon its d positors are concerned. From this it may be argued that as the d positors of a Federal Reserve Bank are member banks there is no o ligation upon the Federal Reserve Bank to receive on deposit at p checks on non-member banks, but even if the language of Section be construed as permissive there seems to be no question that t Federal Reserve Bank has the *right* to receive on deposit from a of its member banks any checks or drafts upon whomsoever drawn provided they are payable upon presentation. The whole purpo of the Act demands that in justice to member banks, they shou exercise that right.

Section 16 further provides that the Federal Reserve Board "m at its discretion exercise the functions of a clearing house for su Federal Reserve Banks * * * and may also *require* each su bank to exercise the functions of a *clearing house* for its memb banks." In accordance with the purpose of this paragraph, the Fe eral Reserve Board, with the view ultimately of establishing a u versal or national system of clearing intersectional balances as w as bank checks and drafts, has established a gold settlement fu

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through which daily clearing between all Federal Reserve Banks are consummated and has also required each Federal Reserve Bank to exercise the functions of a clearing house for its member banks. In order, however, to make fully effective its facilities as a clearing house in accordance with the terms of this section, there does not seem to be any doubt that the Federal Reserve Bank should not only exercise its obligatory power to receive from member banks checks and drafts drawn upon other member banks, but that it should also exercise its permissive power to receive from member banks any other checks and drafts upon whomsoever drawn, provided that they are payable upon presentation.

There are no doubt many non-member banks without sufficient capitalization to make them eligible for membership in the Federal Reserve System, but provision is made for such banks in Section 13 by authorizing the Federal Reserve Banks, for purposes of exchange or of collection, to receive deposits from any non-member bank or trust company. *But for the fact that the small country banks are able to have their out of town items credited at par by some city correspondent, there is no doubt that many more of them would avail themselves of the non-member collection privilege than have done so.*

There is a proviso in Section 13 which allows member and non-member banks to make reasonable charges "to be determined and regulated by the Federal Reserve Board, but in no case to exceed 10 cents per $100 or fraction thereof, based on the total of checks and drafts presented at any one time, for collection or payment of checks and drafts and remission therefor by exchange or otherwise; but *no such charges shall be made against the Federal Reserve Banks.*" This has been construed by the Attorney General of the United States as meaning that a Federal Reserve Bank can not legally pay any fee to a member or non-member bank for the collection and remittance of a check. It follows, therefore, that if the Federal Reserve Banks are to give the service required of them under the provisions of Section 13 they must in cases *where banks refuse to remit for their checks at par use some other means of collection no matter how expensive.*

The action of the various Federal Reserve Banks in extending their par lists has met with the cordial approval of the Federal Reserve Board, which holds the view that under the terms of existing law, the Federal Reserve Banks must use every effort to collect all bank checks received from member banks at par. Several of the Federal Reserve Banks are now able to collect on all points in their respective districts at par and new additions to the other par lists are being made every day. The Board sees no objection to one bank charging another bank or a firm or individual the full amount provided in Section 13 of the Federal Reserve Act (10 cents per $100) and has not undertaken to modify these charges, but the Act expressly provides that no such charge shall be made against the Federal Reserve Banks.

It is the Board's duty to see that the law is administered fairly and without discrimination and that it applies to all banks alike, and it is making an earnest endeavor to carry out the laws as construed by

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the highest legal authority of the administrative branch of the G ernment.

Exhibit B to the Bill.

(Tr., 77.)

FEDERAL RESERVE BANK

OF ATLANTA

DEAR SIR:

As you know, the Federal Reserve Bank of Atlanta and branches have not been handling checks and drafts drawn upon bank. This was not meant as a reflection, but was due to the that you have not signified your willingness to remit at par for checks, and under the provisions of the Federal Reserve Act, as strued by the Attorney General of the United States, we are not mitted to pay exchange charges for the collection of bank checks drafts payable upon presentation.

However, *the time has now arrived*, when, in justice to the S member banks of the Federal Reserve System, and the non-mem banks who maintain clearing accounts with the various Federal serve Banks, together with the 16,196 non-member banks who remitting at par, *we must*, in compliance with the intent of the F eral Reserve Act, begin receiving on deposit, at par, checks and dr payable on presentation drawn on any bank in the United St *whether a member of the Federal Reserve System or not.* T will include the checks and drafts drawn upon your bank, and *purpose of this letter is to ask that you join the vast army of remitting banks* by advising us it will be agreeable for us to incl your name in the next issue of our par list, and that you will re to us at par for items drawn upon you. While, as stated, the F eral Reserve Act does not permit us to pay exchange for the rem tance of bank checks and drafts payable upon presentation, *we incur any cost that is necessary in order to carry out the purpos the Act, and we would very much regret to be forced to adopt o methods of collection that would prove embarrassing, annoying expensive to you.*

In order that you may not incur expense in remitting to us at for items drawn upon you, we will—

1. Enclose with each cash letter a stamped envelope for ret remittance;

2. Permit you to send us currency, at our expense, in payment our letters, if you prefer to remit in that form instead of exchan such currency, if gold, silver, minor coin or $1 and $2 bills to be s us by express, charges collect—bills of larger denomination than to be sent us by registered mail, insured, you to deduct the cos postage and registration, and insure the shipment under our pol we furnishing you the necessary declaration forms;

3. Permit you to open with us a non-member clearing accou and send to us for credit, at par, items drawn on any of the 25,

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nks in the United States shown in our par list, which list we hope announce in a short time covers the remaining 5,109 banks, that not now remitting at par. The items so sent us would be credited us to an uncollected funds account, and be transferred, when ilable in accordance with our time schedule, to a collected funds count. The balances shown in the collected funds account would available to you for use in paying for our cash letters sent you; r only requirement being that a sufficient balance be maintained the collected funds account to offset the items that are in transit you for remittance.

Any excess balances in the collected fund account would be subt to your check as you might desire, or we would make wire transs for you, charging only the cost of telegrams, or ship you curcy at your expense. As a matter of information would say that our member banks, the cost of telegrams incident to wire transs and shipments of currency are absorbed by us. So that you may ualize *the progress that has been made in the establishment of a tional par list,* we enclose a map of the United States from which u will note that 24 States and the District of Columbia are entirely r, and ten States are nearly par.

Also, in order that you may fully understand the necessity for e efforts of the Federal Reserve Banks towards establishing a nanal par list, we enclose copy of a letter written to a non-member nk, which defines the questions of law and policy involved.

The fact remains that the Federal Reserve Act is a law passed by jorities in both Houses of Congress, and neither the Federal Reve Board, nor the Federal Reserve Banks, can do other than fol- the mandates thereof.

We wish to point out in this connection, that, while we would exct you to remit at par for checks and drafts drawn upon you, you uld still be in a position to charge exchange for the collection of ll of lading drafts, maturing notes, and other purely collection ms, and it is probable that the profits derived from the handling these items represent the larger proportion of your exchange earngs.

Also your remitting to us at par would not prohibit you from harging your depositors at time of deposit, at the legal rate of inrest to cover the time involved in the collection of out of town tems.

We trust you will give the matter the earnest consideration it derves, and will advise us that you will remit to us at par for checks nd drafts drawn upon you.

Awaiting the favor of your reply, for which stamped envelope is nclosed, we remain,

Yours very truly,

M. B. WELLBORN,
Governor.

Excerpts from Official Communications of the Federal Re Board.

(Tr., 122.)

WASHINGTON, *April* 5, 19

Subject: Federal Reserve Clearing System.

DEAR SIR:

There is enclosed herewith for your information copy of a l written to a United States Senator in reply to a letter from hi the Board with regard to a complaint made to the Senator by a banking commissioner that banks in certain States have been g special privileges by the Federal Reserve Board in being perm to continue their exchange charges while banks in other State remitting at par.

Very truly yours,

——— ———,
Governo

Enclosure.

To Chairmen of all F. R. Banks.

April 1, 19

I have your letter of March 31st enclosing copy of a letter f the Commissioner of Banking of the State of Wisconsin. I much obliged to you for giving me an opportunity of remov mistaken impression that the Commissioner appears to have banks in certain States have been given special privileges b Federal Reserve Board by being permitted to continue the change charges while banks in other States are remitting at pa

I enclose for your information copy of a response made b Board on January 26, 1920, to a resolution of the Senate, whic plains at considerable length the position that has been taken b Federal Reserve Board and the various Federal Reserve Banks i matter of the country-wide clearing of checks. In this comm cation reference is made to the provisions of Sections 13 and the Federal Reserve Act and to the opinion of the Attorney Ge of the United States as to the intent of these sections. *The Bo charged with the duty and responsibility of inaugurating a com check clearing system throughout the United States;* the Federa serve banks must receive at par from member banks checks whomsoever drawn which are payable upon presentation, and th called "Hardwick Amendment" to Section 13 authorizes both m ber and non-member banks to make "reasonable charges, to b termined and regulated by the Federal Reserve Board, but in no to exceed 10 cents per $100 or fraction thereof, based on the of checks and drafts presented at any one time, for collection or

nt of checks and drafts and remission therefor by exchange or erwise; *but no such charges shall be made against the Federal serve Banks.*"

In view of the opinion of the Attorney General, the Federal Reve Banks do not feel authorized to pay any charges to banks for mittances for checks drawn upon them and sent for collection by Federal Reserve Banks. While banks are still authorized to arge each other for such service, they are prohibited from charg- the Federal Reserve Banks, which are required to receive from mber banks at par all checks which are payable upon presentation. us it came about that the Federal Reserve Banks found them- es in possession of checks drawn upon non-member banks which y could not send to the banks upon which the checks were drawn the reason that those banks had declined to remit at par, and it ame necessary therefore, *as the law does not provide any penalty on non-member banks for refusing to remit at par,* for the Fed- l Reserve Banks *to begin a campaign of education* to induce non- mber banks to remit at par, *or failing this, to provide themselves th some other means of collecting checks drawn upon non-assent- ing banks.* * * *

Since the establishment of the Federal Reserve Banks the cost of nsferring balances from one section of the country to another has en almost entirely eliminated. Each Federal Reserve Bank carries portion of its gold reserve in a gold settlement fund which is kept the Treasury at Washington, and there is a daily telegraphic clear- g conducted by the Federal Reserve Board for all twelve banks and r their branches. The amount of gold in the fund is practically table quantity, but its ownership varies from day to day accord- g to the debits and credits to the different banks. Transfers are de by the Federal Reserve Banks for member banks, and also for n-member banks through the medium of member banks, by tele- ph without any charge whatever to the member bank or its client, *costs being borne by the Federal Reserve Banks.* Thus, a bank Wisconsin or California, Maine or Texas, can secure an instan- neous transfer to any one of the twelve Federal Reserve cities or the twenty cities where there are branch Federal Reserve Banks thout any expense whatsoever, and the sum total of these trans- rs is settled daily through the gold settlement fund above referred *The Federal Reserve Banks pay all costs of transporting cur- ncy to or from their member banks as well as transportation charges currency sent them by non-member banks in payment of checks.* The total volume of transactions through the gold settlement fund the year 1919 was approximately $74,000,000,000, and the total st, including the expense of the leased wires, was about $250,000. his cost was borne by the Federal Reserve Banks and does not repre- nt any expense whatever to the member banks or their customers. hus it will be seen that the basic cost of making domestic exchange the year 1919 was three-tenths of a cent for each $1,000 trans- rred. A charge of 10c. per $100 on the amount cleared through e Gold Settlement fund would have involved an expense of $1 for ch $1,000 transferred, or about $74,000,000 for the entire amount.

The intra-district clearings made by the Federal Reserve Ba
eliminating duplications, amounted to about $135,000,000,000
the total expense of these transfers was borne by the Federal Re
Banks. Had the Federal Reserve Banks been obliged to pay
these transfers at the rate of 10c. per $100, it will be seen that
total expense would have been $135,000,000, which amount is fa
excess of the total earnings of the Federal Reserve Banks and th
fore could not have been absorbed by them. If not absorbed
charge would have had to have been transferred to the depositors
the checks, so it will be seen that a charge of 10c. per $100 upon
business handled by the Federal Reserve Banks would have inv
last year a cost to the commerce and industry of this country o
least $135,000,000.

However, the practice of making exchange charges, which ha
when there was a real justification for such charges because of
expense of transferring funds, had become so deeply rooted that
of the banks very naturally looked upon the charge as a normal
legitimate source of revenue and were reluctant to give it up. (
*the Federal Reserve Act was amended in June, 1917, the Federal
serve Banks had no mandate for undertaking to collect checks
non-member banks at par*, and their activities with respect to c
ances were devoted mainly to the collection of checks on mem
banks. But after the passage of the "Hardwick Amendment" w
the proviso above quoted, which is underscored, *it became the
of the Federal Reserve Banks to undertake to establish a comp
check clearing system*, including checks drawn on non-mem
banks as well as on members. There are approximately two
thousand non-member banks in this country, and at the time
Act was amended, three years ago, a large majority of them w
firmly committed to the policy of making an exchange or ser
charge for remitting for checks drawn upon them. It was clea
impracticable *in the absence of some legislation penalizing* ba
which would not remit at par to establish a complete clearing
tem over night. *It was therefore determined to begin a progres
campaign of education along the line of least resistance.*

A large majority of the banks in New England have been for
past twenty years remitting to the banks of the Boston Clear
House at par, and it was decided to establish in that district the
complete Federal reserve clearing system. A few banks in Verm
objected, but within a few months they all came into line. The
tem was then extended to the New York district. In a part of t
district the opposition was more determined and *it was necessary
a while to make collections on some of the banks through exp
companies.* Then the system was extended to the Philadelphia
trict, and afterward to the Chicago, Cleveland, Kansas City and D
las districts, as well as to certain States in other districts.

It was deemed wise not to force matters by making collecti
through the express companies or other agencies *until* the non-me
ber banks had had the whole situation fully explained to them a
were given an opportunity of agreeing to make remittances at p
Then when a majority of the banks in a Federal reserve district h

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agreed *arrangements were made to collect on non-assenting banks means of agencies, announcement then being made that the system was operative throughout the entire district or in particular tes in a district.*

There is pronounced opposition in Minnesota, and the Federal Reve Bank of Minneapolis does not feel that the time is opportune the announcement of a complete clearing system in its district. rthern Wisconsin is in the Minneapolis district and southern Wisnsin in the Chicago district; hence the apparent inconsistency reed to by the Commissioner. Northern Louisiana is in the Dallas trict and southern Louisiana in the Atlanta district. The Dallas nk has perfected its clearing system while the Atlanta bank has t. In the Atlanta district, which embraces parts of Tennessee and ssissippi and all of Alabama, Georgia and Florida, there is very eat opposition to the Federal reserve clearing system on the part State banks. This opposition exists also in North and South Carona, which are in the Richmond district. It is not so pronounced the State of Virginia, and the Federal Reserve Bank of Richmond s announced that the clearing system is in effect as of April 1 roughout the State of Virginia, but it is not yet in effect in the rolinas, *except as to member and assenting banks.*

I enclose herewith copy of a law which has recently been enacted the Legislature of Mississippi, from which you will see that banks that State are required to pay checks, by whomsoever presented, hich come through another bank at the rate of $99.90 per $100. view of this law it is impossible for the Federal reserve bank *to force* the will of Congress in the State of Mississippi. In Georgia number of non-member banks instituted proceedings against the ederal reserve bank and secured a temporary injunction restraining e bank from collecting checks by making presentation through an gent for payment over the counter, and as under the terms of the Hardwick Amendment" the Federal reserve bank cannot pay exange to the banks upon which checks are drawn, *it has no recourse cept to decline to take such checks at all.* In Alabama, where the ederal reserve bank attempted to appoint agents to collect checks, found in many cases that it was *impossible to get anyone to accept e agency,* and in one case where a reputable merchant was induced accept the agency he gave it up after a few days because *the local anks had convinced him that his business would suffer* if he continued to act for the Federal reserve bank.

The Board is doing everything in its power to have the clearing stem apply equally to all sections and to all banks. Including ember banks there are about thirty thousand banks in the United ates and twenty-seven thousand of them are now remitting at par. he three thousand which decline to remit are making a determined ffort to defeat the purposes of the Federal Reserve Act with respect a country-wide check clearing system, and *unless Congress should e willing to enact some law making it decidedly to the interest of ank to remit at par,* just as in 1865, *by the exercise of its taxing ower,* Congress made it to the interest of the State banks to retire heir State bank notes, *it is difficult to see how it is possible to accel-*

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erate the present rate of progress in the development of a comp nation-wide check clearing system through the Federal Re Banks.

In the foregoing I have endeavored to show (1) that there is longer a basic cost to the banks of the country in making dom exchanges, (2) that Congress has forbidden both member and n member banks to make exchange or service charges against the F eral reserve banks, and (3) that the Attorney General of the Un States has held that Federal reserve banks are not permitted to p such charges.

I may add that the Federal reserve banks give non-member ba which agre to remit at par the option of paying by check on s convenient banking center or by shipment of currency at the expe of the Federal reserve bank. Stamped envelopes are always sen non-member bank for use in making remittances. Non-mem banks are not asked to perform any collection service; they a merely asked to waive personal presentation of checks drawn u themselves by their own depositors and to pay them through t mails without making any charge, and the law appears clearly to d rect them to do this.

Some of the banks, member banks as well as non-members, a asking their depositors to use a check which has imprinted upon face some restrictive clause, such as "Payable only in exchange current rates," or "Not payable in cash if presented for account o Federal Reserve bank." I enclose for your further informat forms of notices which are being used by manufacturers and jobb in various centers in returning checks to their customers which c not be collected through a Federal Reserve Bank, and also copy o letter which I am informed a well-known shoe manufacturing co cern is sending to its customers.

The legal proceedings against the Federal Reserve Bank of A lanta, to which reference is made above, were brought in a St court. The case was transferred to a Federal court and was hea on its merits a few days ago, but up to this time no decision has be handed down. In any event, an appeal will probably be taken to higher court—possibly to the Supreme Court of the United States and *it is probable that several months will elapse* before *a compl clearing system can be established* in the Atlanta district.

Very truly yours,

(Signed) W. P. G. HARDING,
Governor.

April 9, 1920.

MR. I. W. ARNOLD, Cashier,
Merchants & Farmers B k,
Davisboro, Georgia.

DEAR SIR:

Receipt is acknowledged of yours April 8th, giving notice, in a cordance with your agreement, that after 30 days from this da have elapsed, you desire to discontinue remitting at par for check drawn upon you. We are, of course, willing to live up to our agre

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ent to permit you to cancel the arrangement on 30 days' notice, t will ask that you extend that time until May 15th, which would e 36 days. Our reason for asking this is that the next issue of our r list will not go to press until May 1st, and it is usually about teen days before it is distributed throughout the United States (Tr., 128).

(Tr., 129.)

FEDERAL RESERVE BOARD

WASHINGTON

April 12, 1920.

DEAR CONGRESSMAN:

The situation regarding the Federal Reserve clearing system can e summed up in a very few words. There are certain clauses in ections 13 and 16 of the Federal Reserve Act which seem to require he Federal Reserve Board to establish a system for the clearing by he Federal Reserve Banks of all checks payable upon presentation ithin their respective districts regardless of whether the checks are rawn upon member or non-member banks. * * * The Federal eserve Banks therefore have called the attention of non-member anks to these provisions of law and have stated that stamped enelopes will be sent in each case to the remitting bank in order that here may be no actual expense incurred by the payer bank in making the remittance and that if it is more convenient remittance may e made in currency at the expense of the Federal Reserve Bank. *All non-member banks have been advised that if they do not care to remit to the Federal Reserve Banks at par, collection will be made through some outside agency by having the checks presented at the bank counters for payment.*

If this is coercion as contended by your constituent it is unavoidable, for regardless of the question as to whether Congress has the ight to legislate in any way that results in the diminution of the profits of State banks, it clearly has the power to legislate in matters elating to the manner in which the Federal Reserve Banks shall operate. The Board's view therefore is that *Congress* (1) *has directed* all banks, non-members as well as members, not to make exchange charges against Federal Reserve Banks, (2) *has directed* the Federal Reserve Banks *to receive on deposit* at par any checks and drafts which are payable on presentation, and (3) *has directed* the Federal Reserve Banks not to pay any exchange charges to banks in making these collections.

Whether Congress has the constitutional right to enact a law prohibiting a Federal Reserve Bank from paying exchange to a nonmember bank on checks drawn upon the non-member bank by its own depositors may be argued to be a question of law which should be determined ultimately by the courts. If it is desired to test the constitutionality of the law, it appears that the banks which question its validity should initiate proceedings rather than the Federal Re-

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serve Board. If, on the other hand, they should concede that C
gress has the right to legislate in the manner it has done but bel
that the law is oppressive, unjust or unwise, it would appear t
they should appeal to Congress with the view of having the objecti
able features of the Act stricken out or modified. Here again
would seem that the initiative should be taken by the banks wh
feel themselves aggrieved in the matter. If these banks, althou
entertaining doubts as to the validity of the law, should feel that
cause of the length of time necessarily involved in obtaining a
dicial and final interpretation it is undesirable to litigate, then a
it would seem that recourse should be had to the more direct met
of appealing to Congress. In that case, however, it would seem t
the banks would put themselves in a more consistent attitude if t
would not attempt to obstruct the operation of the law as it
stands pending a final determination of policy by Congress.

The Board holds the further view, however, that if non-mem
banks be no longer required to remit at par, member banks
should be relieved from such an obligation, for the member ba
are supporting the Federal Reserve System and it would be unfa
deprive them of opportunities for profit which are given to non-me
bers. This, of course, raises a question as to the conflict of the
terest of the business community and the general public on the
hand, and the banks on the other. If you should be interested
further consideration of this phase of the matter, I would sug
that you read the enclosure, which is a copy of a letter which
Board sent a few days ago to a United States Senator in answe
some inquiries made by one of his constituents.

Very truly yours,

W. P. G. Harding,
Governor.

Enclosure.

Federal Reserve Board

WASHINGTON

May 7, 1920.

Check Clearings and Collections.

Subject: Letter to House Committee on Banking and Currency R
ative to Par Clearing Controversy.

Dear Sir:

There is enclosed herewith copy of a letter which the Board
dressed on May 5th to the Chairman of the Banking and Curre
Committee of the House of Representatives, from which you will
that the Board takes the position that Congress should settle defini
and finally the controversy regarding par remittances for checks.

The Board has not been advised as to whether the Banking a
Currency Committee will adopt the suggestion contained in its le
that the Committee give all interested parties a hearing, but in
event the Committee decides to do so, wide publicity will be gi

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In order that all who desire to be heard may have an opportunity to express their views. It is the Board's view that the Federal Reserve Banks should not participate in the hearing unless the Committee should request the attendance of their representatives. In case the Committee should fix a date for a hearing, Federal Reserve Banks should take steps to inform their member banks and the public.

Very truly yours,

——— ———,
Governor.

(Tr., 131.)

Enclosure.

To Chairmen of all F. R. Banks.

May 5, 1920.

MY DEAR MR. CHAIRMAN:

The Federal Reserve Board desires to invite the attention of your Committee to Senate Document 184, which contains the Board's reply to a Resolution of the Senate of the United States dated January 19, 1920, requesting that the Federal Reserve Board "inform the Senate whether the Board or any Federal Reserve Bank, under instructions or with the consent or knowledge of said Board, has resorted to any method of coercion to compel State banks to join the Federal Reserve System, or by threats or other coercive means has attempted to require such State Banks to submit to any rules or regulations made by the Federal Reserve Board or any Federal Reserve Bank."

This response explains at considerable length the position that has been taken by the Federal Reserve Board and the various Federal Reserve Banks in the matter of the country-wide clearing of checks. In this communication reference is made to the provisions of Sections 13 and 16 of the Federal Reserve Act and to the opinion of the Attorney General of the United States as to the intent of these sections. The Board believes that it is charged with the duty and responsibility of *inaugurating a complete check clearing system throughout the United States,* that the Federal Reserve Banks in compliance with the evident purpose of the law and in fairness to all their member banks must exercise their power to receive for collection from those member banks checks upon whomsoever drawn which are payable upon presentation, and the so-called "Hardwick Amendment" to Section 13 authorizes both member and non-member banks to make "reasonable charges, to be determined and regulated by the Federal Reserve Board, but in no case to exceed 10 cents per $100 or fraction thereof, based on the total of checks and drafts presented at any one time, for collection of payment of checks and drafts and remission therefor by exchange or otherwise; *but no such charges shall be made against the Federal Reserve Banks.*"

In view of the opinion of the Attorney General, the Federal Reserve Banks do not feel authorized to pay any charges to banks for remitting for checks drawn upon them and sent for collection by the

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Federal Reserve Banks. While banks are still authorized to charge each other for such service, they are prohibited from charging the Federal Reserve Banks, which are required to receive from member banks at par all checks which are payable upon presentation. The it happens that the Federal Reserve Banks find themselves in possession of checks drawn upon non-member banks which they cannot send by mail to the banks upon which they are drawn for the reason that those banks decline to remit at par, and it becomes necessary therefore, as the law does not provide any penalty upon non-member banks for refusing to remit at par, for the Federal Reserve Banks to provide themselves with some other means of collecting checks drawn upon such non-assenting banks.

The Federal Reserve Banks give non-member banks which agree to remit at par the option of paying by check on some convenient banking center or by shipment of currency at the expense of the Federal Reserve Bank. Stamped envelopes are always sent a non-member bank for use in making remittances. Non-member banks are not asked to perform any collection service; they are merely asked to waive personal presentation of checks drawn upon themselves by their own depositors and to pay them by mail remittances without making any charge. In the event that those non-member banks do not agree to remit through the mails at par for checks forwarded to them by the Federal Reserve Banks, the Federal Reserve Banks are obliged, as previously stated, to effect the collection of those checks by the only other means possible, that is, presentation over the counter. The legal right to collect checks in this manner cannot be disputed since it is a right which is inherent in the check itself and which may be exercised by any holder thereof whether an individual, firm or corporation.

There is unquestionably, however, *a wide and deep-seated opposition* on the part of non-member banks in various sections of the country, and on the part of some member banks as well, to the universal clearing system which the Federal Reserve Board has been endeavoring to establish. Legal proceedings were instituted several weeks ago in the Sixth Federal Reserve District and an injunction was granted restraining the Federal Reserve Bank from collecting checks drawn upon non-member banks through the express companies or by having presentation made by a local agent other than a bank. The United States District Judge has decided this case on all points in favor of the Federal Reserve Bank, but an appeal will be taken to the United States Circuit Court of Appeals and eventually, no doubt, to the Supreme Court of the United States. Pending the appeal the United States District Court will be asked to grant a supersedeas, which if granted will keep in effect the terms of the original injunction.

The Board would respectfully represent to your Committee that it is important, if possible, to have the attitude of Congress toward the Federal Reserve par collection system made clear beyond any possible doubt, and it therefore requests that your Committee give all interested parties a hearing, both those who are opposed to the present system and those who favor its continuation and completion

and that after a hearing your Committee adopt one of two definite courses: (1) that it report a bill authorizing both member and non-member banks to make charges against the Federal Reserve Bank as well as against each other for remitting for checks, not to exceed ten cents per one hundred dollars, with the provision that Federal Reserve Banks be authorized to charge to sending banks any exchange charges paid in collecting checks for them, or (2) that it report *a bill clearly and definitely establishing the universality of the par remittance system by imposing such conditions or penalties* as will insure compliance with the law by all banks of deposit, *non-member State banks and private bankers* as well as member banks.

The Federal Reserve Board suggests the second alternative only for the reason that it has been contended that the present enactment leaves open some doubt as to the duty of the Federal Reserve Banks to receive checks drawn on non-member banks which are not willing to remit at par, and because it is convinced that a large number of non-member banks will never be reconciled to par remittance as long as Section 13 of the Act remains in its present form (Tr., 133).

Extracts from Letters of Executive Officers of Defendant Reserve Bank Respecting the Campaign for Universal Par Clearance.

(Dates and addresses can be found by reference to the complete letters found in the transcript at the pages indicated.)

In order that you and all other member banks may derive greater benefits from the clearing and collection facilities afforded by the Federal Reserve System, *all the Federal Reserve Banks are extending every effort to obtain additions to our par list.*

Since January 1st, 1919, a total of 1,270 banks have been added to the par list, but there are still a large number of solvent banks whose names do not appear thereon, and we, in co-operation with the other Federal Reserve Banks are continuing our efforts to the end that the number of banks on the par list shall be further increased, and that in the course of time there will be brought into existence a national par list.

You can help us to add at least one name to the par list by authorizing us to send to you for collection and remittance or credit, at par, items drawn on the Bank of Cartersville, who for reasons of their own have so far declined to remit at par for items drawn upon them. By doing this, you will be contributing to the enlargement of the par collection facilities of the Federal Reserve System, and at the same time, *derive the benefits accruing to the handling of checks drawn upon your neighbor* (Tr., 68).

* * * * * * *

We are again approaching you on the subject of your remitting at par for items drawn upon you that we may send to you for collection and remittance.

The twelve Federal Reserve Banks are uniting in their efforts to bring about the establishment of a national par list, and rapid strides are now being made in that direction (Tr., 69).

* * * * * * *

On July 12, we wrote you asking your co-operation in bringing about a national par list, by remitting to us at par for items drawn upon your good bank, to which we do not appear to have received reply.

Since our last letter, more than 500 banks, by permitting their names to be added to the Federal Reserve System par list, have joined with the 20,000 other institutions that were already on the par list in recognizing the par remittance of checks drawn upon them is an essential to the complete service that is due to their depositors.

To give the checks of your customers the same standing in the commercial world as the checks drawn on banks that are on our par list, it is to your interest that you agree to remit at par, and we trust you will advise us accordingly, so that the name of your institution may appear in the next issue, which will be printed shortly.

NOTE.—Form letter (Tr., 69).

* * * * * * *

On several occasions we have written you, requesting your co-operation in bringing about a national par list, by agreeing to remit to us at par for items drawn upon you, but so far you have not indicated your desire to perform this SERVICE for your depositors.

There are now 21,882 banks in the United States that are remitting at par, thus giving a SERVICE to their depositors to which they are justly entitled. There are 17 States in the United States whose banks (members and non-members of the Federal Reserve System) are giving this SERVICE. In Tennessee there is a total of 540 banks of which 276 are giving the same high type of SERVICE TO their depositors. This means that checks drawn by the depositors of 276 banks in Tennessee are more readily acceptable in the channels of commerce and industry than are the checks drawn upon you by your depositors (Tr., 72).

* * * * * * *

Receipt is acknowledged of yours of Dec. 6th, advising that after Dec. 31, 1919, you will discontinue handling for us at par items drawn upon your bank. We very much regret this action on your part coming, as it does, when all the Federal Reserve Banks are daily adding to the list of banks remitting at par; their efforts having reached the point where there are only about 5,000 banks of the 30,000 in the United States that are not so remitting. The day is not very far distant when the remaining banks will realize the necessity of giving this high type of service to their depositors, and we trust, upon further consideration, you will agree to remain on our par list and remit at par for such items as we may send you.

In event you do not feel that you can continue to do so, we will k that you extend the time that you will remit at par until Jan. , 1920. Our par list is printed around the fifth of the month, d it usually takes ten days for its distribution throughout the nited States; therefore, we could not bring to the attention of the rious banks the removal of your name from this list until that me (Tr., 73).

* * * * * * *

Under date of November 20th, you advised that you would take p with your directors, at their next meting in December, the ques- on of remitting to us at par for items drawn upon you, and not hav- g heard from you further, we write to inquire their decision.

In order that you may visualize the progress that has been made y all the Federal Reserve Banks towards the establishment of a na- onal par list, we enclose a map of the United States, which shows at but 5,109 were not remitting at par on December 1st. The tal number of banks on our par list as of that date, was 25,151 nd you will note from the map that 25 States were entirely par, and 0 nearly par. We are now making an organized effort to induce he remaining non-par banks to agree to remit at par, and trust that our bank will be one of the first to do so (Tr., 79).

* * * * * * *

Receipt is acknowledged of yours December 27th, advising that ou have taken under consideration the question of remitting at par or items drawn upon you, and *we trust you will reach a favorable ecision, as we would dislike very much to be compelled to adopt ther means of collection, which would prove expensive and annoy- ng to everyone concerned* (Tr., 80).

* * * * * * *

Receipt is acknowledged of yours of December 27th, advising that ur letter of December 24th, with respect to par remittance, will be ubmitted to your Directors at their next meeting January 7th, and hat you will advise us of their decision.

We very much hope that they will decide favorably, as *we would egret to find it necessary to adopt other means of collection that ould, no doubt, prove expensive and annoying to all concerned* (Tr., 81).

* * * * * * *

We note your comment with the respect to your construction of he last three lines of the second paragraph of our recent letter. In eply would state that since the establishment of the Federal Reserve System, *we have endeavored by persuasive methods to obtain the greement of all non-member banks in our district to remit at par. The majority have not seen fit to comply.* In the past we have per-

mitted larger national questions to curtail our efforts to obtain vo
tary action on the part of non-member banks, *but we feel that*
time has now come when we are duty bound to carry out the p
visions of the Federal Reserve Act as they relate to the handlin
items that we may receive on deposit (Tr., 83).

* * * * * * *

As officers of the Federal Reserve Bank we must carry out the p
visions of the Federal Reserve Act, and as the par collection of ch
is one of the provisions of that Act, *we will be compelled to e*
means of collection that will no doubt prove expensive and annoy
to all concerned in connection with those banks who do not vo
tarily agree to remit at par (Tr., 84).

* * * * * * *

We trust that upon further consideration of the matter you w
agree to remit at par as we would dislike very much to be compel
to adopt other means of collection, which would, no doubt, pr
expenisve and annoying to you (Tr., 86).

* * * * * * *

However, as stated, *the par handling of checks is a function p*
scribed by the Federal Reserve Act and we must provide facilities
matter how expensive.

We trust you will further consider the matter, as *we would dis*
very much to have to adopt means of collection which would pr
annoying to yourselves and customers, as well as an item of expe
to you in shipping currency to pay your checks, which would
presented at your counter for payment in cash.

As a matter of information, you will no doubt be interested
know that 1,154 non-member banks were added to our par list d
ing the month of December, which leaves only 4,000 banks in t
United States that are not remitting at par (Tr., 87).

* * * * * * *

Replying to your letter of December 30, wherein you refer to M
De Saussure and myself as trying to force the plan of par clearin
ovêr our country bank friends—I suppose Mr. De Saussure feels
I do, that what we are doing *is simply in our line of duty.*

I have owned country banks, and having been a country banke
myself, of course, I have a kindly feeling to all those engaged
country banking business. I did all in my power, in a reasonab
way, to promote their interest in this matter, but the question h
now been settled by Congress, and there is nothing left to do but ob
the plain mandates of the law.

The country banker had his hearing before Congress and w
backed by a Committee of the American Bankers' Association, an
the Hardwick amendment represented the ideas and wishes of th
country banker. The whole question was fought out on the flo

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Congress, and the country bankers lost— *now they must abide by the result* (Tr., 88).

* * * * * * *

As stated in our previous letter, we recognize our duty to comply with the provisions of the Federal Reserve Act, and it is our purpose to collect at par items drawn on those banks which are not now so remitting; *first giving such banks the opportunity to voluntarily agree to remit at par, and if unsuccessful adopt other means of collection.* Therefore, in our opinion, *it will not be very long* before we will be able to handle everything at par, and, in the meantime, as outlined in our letter of the 24th, you could open with us a non-member bank clearing account and send to us for credit items drawn on any of the banks shown in our par list. These items would be credited to a deferred account, and, in accordance with our time schedule, transferred to a collected funds account. The balances in the latter account could be used by you in payment of items drawn upon you, and any excess balances would be transferred for you without cost, except when the transfer was made by telegraph, the actual cost of the message would be charged. Our only requirement in connection with such an account would be that you maintain a sufficient balance in the collected funds account to offset the average amount of items that we would send to you, and which are in transit.

Please give the matter further consideration, and advise if you cannot remit at par for items drawn upon you.

When writing you on the 24th, we also addressed a similar letter to the Roanoke Banking Company, to which we have not received reply, and in event they do not answer favorably, it occurs to us that possibly you might be interested in handling also for us at par items drawn upon them. By so doing, you would not doubt be in control of the clearings in your city, *besides having information with respect to depositors of your neighbor that is obtainable through the handling of their checks.* This, of course, is predicated upon their declining to remit at par. *In event we are unable to arrange for this par remittance,* we will, much as we dislike to do so, be compelled to *adopt other means of collection that would prove expensive and annoying to all concerned* (Tr., 89).

* * * * * * *

We trust that your Board of Directors, at its next meeting, will not find it advisable to rescind their action in permitting you to remit at par for, as stated in our previous letter, *the time has now come* when we must begin full par collection *as soon as possible,* and *where present non-par remitting banks cannot be prevailed upon to perform that function, we will be compelled,* much as we dislike it, *to adopt other means of collection that would prove costly and annoying to all concerned* (Tr., 92).

* * * * * * *

To carry out the provisions of the Federal Reserve Act we will be compelled, *if you do not agree to remit at par, to present your items*

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at your counter for payment in cash, which would no doubt p expensive to you, as you would necessarily have to be contin shipping in currency to meet those demands. This method w also, no doubt, prove annoying to you and to your custo (Tr., 92).

* * * * * * *

A letter similar to the one addressed to you on December 26th also written to the Hawkins County Bank, your city, to which have not received reply. It occurs to us that, in event they do agree to remit, you might be interested in handling for us at items drawn on that bank. This would probably give you contr the clearings in your city, as well as *permit you to derive the ben that accrue through the handling of items drawn upon a compet bank* (Tr., 95).

* * * * * * *

A letter similar to the one sent you was also addressed to the M chants & Farmers Bank of your city on December 24th, to wh we have not received reply. It occurs to us that in event they do make a favorable response, you might be interested in handling us at par items drawn upon that bank. By doing so, you w most likely obtain the control of the local clearings, *in addition to benefits that accrue by reason of seeing the checks of the depos of a competitor bank.* In event your neighbor does not agre remit at par, and you also do not wish to handle the items for *we will, of course, have to adopt other means of collecting the che much as we would dislike to do so, as it would no doubt proc noying to all concerned* (Tr., 96).

* * * * * * *

I regret that many of the State banks, not members of the F eral Reserve System, are taking the stand against us in this c paign that we are inaugurating (Tr., 98).

* * * * * * *

We trust you will give the matter further consideration, a would dislike very much to cause you the annoyance that would incurred should we find it necessary to arbitrarily place your n on our par list, and arrange to present your items for payment cash (Tr., 103).

* * * * * * *

Receipt is acknowledged of yours January 15th, in which you st that your recent agreement to remit at par did not contemplate th you would do so for the general run of items. As your letter January 1st made no qualifications, we assumed that you would mit for all items, *and accordingly included the name of your ba*

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our par list, since which time we have been receiving items drawn on you that have been sent you by our New Orleans Branch for mittance. It is now impossible to remove your name from that , and *if you will not continue to remit at par, we will*, of course, e to *adopt other means of collection*. We would prefer, however, t you have the opportunity of remitting at par, and, before adopting other methods, will be pleased to hear from you further (Tr., 05).

* * * * * * *

Receipt is acknowledged of yours January 15th, advising that you l remit to us at par for items drawn upon you. *We will* accordly *include the name of our good bank in* the next issue of *our par , and as soon as the items begin coming to us*, they will be forarded to you by our New Orleans Branch for remittance to it in New Orleans or New York exchange, or, when more convenient, in currency at our expense, to be shipped as outlined in our letter of December 24th. The New Orleans Branch will be pleased to furnish u, upon request, with necessary forms for declaring insurance on pments by registered mail.

A letter similar to the one addressed to you on December 24th was o sent to the Ocean Springs State Bank, of your city, to which we e not received reply. It occurs to us that in event they do not gree to remit at par, you would be interested in handling for us at par items drawn upon them. This would probably give you control of the clearings of your city, *as well as the benefit of the information that may be derived through the handling of checks drawn upon a competitor bank*. Of course if they do not agree to remit at par, and you also do not handle the items, *we will have to adopt other means of collection* (Tr., 106).

* * * * * * *

Your letter states that you will remit for all items on Dade City, Florida, and we assume that this means you will handle for us at par items on the Bank of Pasco County, your city. *If this is the case*, please advise us and *we will include the name of that bank in our par list*, and the Jacksonville Branch will also send their items to you. This will probably give you control of the clearings on your city, *as well as information that is obtainable through the handling of checks drawn on a competitor bank* (Tr., 108).

* * * * * * *

The Attorney General of the United States, to whom the matter was submitted for opinion, has stated that the clear intent of the paragraph quoted is that no charges for exchange for the remission of checks and drafts, payable upon presentation, shall be made against a Federal Reserve Bank.

We are, therefore, not permitted to pay exchange for the remission of the letter sent you herein, and if you cannot see your way ar to remit in exchange at par (envelope enclosed), or send us

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currency at our expense, in payment, we would ask that you kindly return the items to us at once, *so that we may arrange for their presentation at your counter by an authorized agent, for payment in cash* (Tr., 108).

* * * * * * *

We are, therefore, not permitted to pay exchange for the remittance of the letter sent you herein, and if you cannot see your way clear to remit in exchange at par (envelope enclosed), or send us currency at our expense, in payment, we would ask that you kindly return the items to us at once, *so that we may arrange for their presentation at your counter by an authorized agent, for payment in cash.*

We hope for your favorable action, as we would very much regret to be compelled to adopt other methods of collection (Tr., 110).

* * * * * * *

Receipt is acknowledged of yours February 7th, advising that until further notice, you will remit at par in New York exchange for checks drawn upon your good bank.

We are accordingly instructing our transit department to discontinue *forwarding the items for collection by express*, and to return them direct to you, together with stamped envelope for remittance (Tr., 115).

* * * * * * *

You are no doubt more or less *familiar with the efforts the Federal Reserve Banks are making to establish a national par list.* At the present time upwards of 27,000 banks in the United States are remitting *to the Federal Reserve Banks* at par in payment of items drawn on themselves. A very large percentage of these banks have untarily agreed to do so. In some cases the Federal Reserve Banks have been afforded facilities by non-member banks for collecting items at par drawn on other non-member banks, and, while such arrangement is usually mutually satisfactory, it is only desirable from our standpoint, and undoubtedly from that of the non-member bank, to remit to us direct rather than to have their items presented to them through other non-member banks.

By courtesy of the Peoples Bank of Clearwater we have been enabled to add the name of your good bank to our par list, and have for some months past been effecting the collection of items drawn on you through that bank. We presume that it would be much more to your liking to have the items we receive sent direct to you for remittance to us, and we desire to propose to you that you agree to remit to us at par (Tr., 113).

* * * * * * *

Since your letter was written, we have discontinued handling items drawn on your bank, and have removed your name from our par list. *Our arrangement* for collecting checks drawn on you, *by presenting them for payment in cash* in event you did not see your

ar to remit at par, *have not been perfected.* On account of the ge number of non par remitting banks in the Sixth Federal Reve District, *it is not possible for us to arbitrarily commence collection at par* on all banks at one time, and, therefore, *we have to go about it by setting off certain areas to be taken up at a time.* As oon as we are able to make the necessary arrangements in your city, *we will again place the name of your bank on our par list,* and begin ollecting the items *by presenting them for payment in cash,* unless ou will advise us that you will remit at par, reserving the right to discontinue doing so in event the case now pending in court against us is decided adversely (Tr., 116).

* * * * * * *

We regret very much that you deem it advisable to discontinue remitting at par, and will remove the name of your bank from our par list until we are able to make other arrangements for the collection of the checks, for as you know, we are not permitted under the law to pay exchange. We will ask, however, that you please continue remitting at par until March 15th, *as we are obligated to handle the items until a new issue of our par list* has been distributed throughout the United States. The next issue will go to press about March 1st, but will not receive distribution until about the 15th. We feel sure, therefore, that you will assist us in carrying out our obligation by continuing your agreement to remit at par until we can give, by a new issue of the par list, the reasonable notice to which our depositors are entitled (Tr., 118).

* * * * * * *

We regret that after remitting at par for so long a time, you deem it advisable to discontinue doing so. You are, of course, aware of the fact that announcement was made by us a few months ago that we were going to begin handling for our depositors all checks drawn on banks, whether members or non-members. We invited the non-member banks to remit to us at par, and to open clearing accounts with us, if they desired to do so, *at the same time stating that in event they did not remit at par, we would have to arrange to present their items for payment in cash,* as the law did not permit us to pay exchange. A temporary injunction was obtained by some of the banks, and in order that the courts should receive due respect at our hands, *we for the time being abandoned arrangements for personal presentation of the checks.* You have perhaps noted also that Judge Beverly D. Evans, of the United States District Court, rendered decision about a week ago dismissing the bill for want of equity. This, of course, permits us to go ahead and collect the checks as we see fit, so long as we do it in a lawful manner, and it occurs to us that *you would perhaps prefer to continue remitting at par rather than have the items presented to you for payment in cash,* when we make arrangements along that line (Tr., 128).

* * * * * * *

Extracts from Letters of Non-Member Bankers to Executive Officers of Defendant Respecting the Campaign for Universal Par Clearance.

(Dates and addresses can be found by references to the complete letters found in the transcript at the pages indicated.)

Explanatory Note.

On December 24, 1919, and December 26, 1919, each of the form letters found in Exhibits A and B to the original bill (*ante*, p. 18-20) were sent out by registered mail under one cover by the Federal Reserve Bank of Atlanta to 1,050 non-member banks in the Sixth District. In the letters following, where acknowledgment is made of the receipt of the letters of Dec. 24 or Dec. 26, 1919, the above described letters are referred to.

Yours of December 24th instant, by registered mail, reached us Saturday last. *I have carefully noted the threat involved which is now generally recognized as being "the big stick" which the powers that be have decided to use to compel the clearing of checks at par* (Tr., 83).

* * * * * * *

We believe our charge is fair and that we are entitled to it. While this is true we *are not unmindful of the annoyance and constant vexation that we can, and your letter practically assures us we will,* be subjected to unless we go to a par basis we have decided to say that with the understanding that we be allowed to remit in New Orleans exchange, as we are at present doing, *you may enter us on your par list.*

While *we are now submitting to the demands which compel this action, if we are to escape the threattened penalties,* we beg to say that even under adverse conditions we will not desert our comrades in the service, should there develop a disposition to test the matter of submission, through organized effort, that *this bank will cast its lot with its fellow sufferers* and avail of its constitutional right to withdraw from the agreement now entered into, of allowing our bank to go to the par list of the Federal Reserve Bank of Atlanta (Tr., 84).

* * * * * * *

We would not object to remitting at par for checks deposited with your good bank, if the banks who send these items would return us the same courtesy.

A number of our depositors are in Chattanooga, Tennessee, every week, and sometimes want a check cashed, and *there is not a bank in that city that will cash a check for one of our depositors without*

charging from ten to twenty-five cents exchange on checks drawn on our bank, and these same banks will send all items drawn on Soddy Banking Company to you for collection, for which we will remit at par, *while they will charge me or my depositors exchange every chance they get* (Tr., 85).

* * * * * * *

We have your registered letter of the 24th instant, regarding our remitting to you at par for our checks which may come into your hands, and which you say you are willing to handle after we signify our willingness to comply with your wishes.

The question of exchange is one which will not be settled until it is settled right, and our humble opinion is that it is not being brought to a fair or equable conclusion *through the coercive methods which the Federal Reserve Boards are forcing upon both member and non-member banks.*

As we see the Act, it was never intended to inflict any such hardship on the small banks, which by virtue of the Act cannot become a member, and neither is it our opinion that the Act ever intended to make a big, money-making proposition out of the Federal Reserve Banks.

We believe that the Act as now being enforced, does very materially interfere with the vested rights of the non-members of this country, and in view of the unprecedented profits of the Federal Reserve Bank, and the unfair distribution of these earnings among the stockholders, we feel that we are justified in declining to subscribe to any plan which will further enhance the earning capacity of the Reserve Bank, *especially when it is at the expense of us little fellows as well as your own members.*

We would respectfully refer you to Mr. Andrew Pondrom's letter in connection with the Houston Branch. He expresses our sentiment even better than we can (Tr., 86).

* * * * * * *

Replying to your circular letter of December 26th in regard to listing the Citizens' Bank of Rogersville as a par bank to the Federal Reserve Bank of Atlanta, Ga., for the collection of checks drawn against our banks, *we have decided to accept the proposition as defined in your letter and to open with you a non-member clearing account* for the period of one year, and if we find that this arrangement is satisfactory of course we will be glad to continue the arrangement indefinitely.

If we understand your proposition, this bank will be permitted to carry a clearing account with you, you to collect all checks on par points without charge to us, and at the expiration of a specified time, say, three to five days, you will credit our account and allow us to draw against you in payment of items sent us by you for collection on this bank—items meaning checks or cash items. If we understand it, we are not supposed to collect notes, sight drafts, etc., under this arrangement except that we make a charge of $1 per thousand

for the service of collecting notes, sight drafts and purely collecti items.

We also understand further that we are not to be paid any intere on any realized balance that we maintain with you (Tr., 94).

* * * * * * *

We are very sorry to receive yours of the 26th. It sounds ve undemocratic, but *as your office threatened something of this kin for the past year or two*, we are not much surprised to receive th letter, but we still believe in our rights of pay for service rendere and will continue to charge for this service as long as we can.

We are very sorry such good friends as yourself and Mr. De Sau sure are now engaged in trying to force this idea over your count bank friends.

P. S.—Please be as reasonable with us as you can. *Exchan means much to us, and our charges are not excessive* (Tr., 87).

* * * * * * *

In answer to your letter of December 26th, asking us to signi our willingness to remit you at par will say, *as we see it we will compelled to comply to request. While we feel this will be a gre injustice to the country banks* from the fact that it will cause them lose considerable revenue from exchange.

Speaking for ourselves, it is liable to be *a detriment* to us to th amount *of from* $600 *to* $700 *a year.*

In your letter you state that in order for us to obviate this could readily charge exchange on foreign checks we cash throu the window. We cannot do this from the fact that *our deposit are made up largely of farmers*, and if we should attempt such thing as this, we believe that *many of them would discontinue positing their checks in our bank.*

It has never been a custom here to charge our depositors for co lecting foreign checks, and we believe this would have *a tendency very materially affect deposits in country banks*, but as we stated the outset, *we see no other remedy but that you should place us your par list* (Tr., 93).

* * * * * * *

We duly received your circular letter of December 24th with whi you enclosed copy of a letter from Mr. Harding to some other ban

Since it seems we are going to have to forfeit our exchange bu ness, I guess there is nothing to do but what we are compelled to that is, remit you without charge, but I hope that it is possible th we may have some rights as to charges to other people (Tr., 95).

* * * * * * *

Your letter of Dec. 24th, asking us to agree to remit you at par f checks on us, was duly received, but due to the unusual amount clerical work incident to the close of the year we were unable to re sooner.

We have decided to do as you request and remit you at par for all your checks on us altho it will mean a very considerable reduction in our income (Tr., 97).

* * * * * * *

At a Meeting of our Board of Directors held on yesterday, I was instructed to advise you that beginning immediately we will remit you for cash items drawn on this institution at par *but we reserve the right to terminate this agreement at any time without notice to you.*

For your own information, I might add further that we had a Meeting of our Stockholders on yesterday. The question of our increasing our capital to $100,000.00 and joining the Federal Reserve System was seriously discussed; in fact, this question was mentioned in our call to our Stockholders and it was one of the foremost questions before this Meeting. *The Stockholders took the attitude that in view of your recent activities it would be best for us to remain out of the System* and voted accordingly (Tr., 98).

* * * * * * *

We get interest on our daily balances, and we should not like to deposit our money where we would not get interest, *and besides we get credit the day the checks are received,* and that is quite a little item in our favor (Tr., 104).

* * * * * * *

You evidently misunderstood our letter in reply to yours of Dec. 24, 1919, concerning par remittances. We told you we were willing to remit at par to you as we had been doing, meaning Government checks or checks given to satisfy Government obligations, not all checks. We are remitting to your New Orleans Branch today at par, *but are not willing to do so generally.* We are only a small institution, and *one of our sources of income is exchange, so you will please advise other banks that we are not on the par list* (Tr., 195).

* * * * * * *

Replying to your letter of the 10th. We are remitting for your letter of $543.58 less 1/10 of 1% exchange. We are willing to make remittances for items on us at this rate, giving you exchange on Jacksonville, Fla.

We are not willing to clear at par and it is not our intention to do so until such time as par remittances are made by all banks in Florida, which will call for a general readjustment of country banking. The only remuneration that we receive on certain of the business that we handle is the small exchange, that we get. *And our customers know this as well as we do, and they stand with us on the matter* (Tr., 109).

* * * * * * *

Some months ago during a time when the Quincy State Bank of this city were handling your cash letters at par, you advised us that they had decided to sever this arrangement about 15 days before you issued a new par list and invited us to make you a rate for handling items on them during this interval.

We understand that quite recently the local express office are handling these items. As we have heard it, the local office ships the money to you and that a special representative of the Express Company comes here at intervals to collect for the checks.

We presume the present arrangement is of considerable expense and in view of this if we can be of service on the basis of one-tenth of one per cent, the same rate we made in the instance above recited, we will be glad to have you divert your items on the Quincy State Bank to this bank (Tr., 111).

* * * * * * *

We are remitting to you at par item sent us yesterday, but you need not send us any more for par collection as we will return them unless the Government is going to put on a system that will force the Banks to remit at par, and if this be true you won't have to force us, we will promptly comply. I have told you personally and the records of the Federal Reserve Bank will show that we remitted at par a long time, but my neighbor and competitor across the street continued to collect Exchange and the National Banks in this part of the country had written on their checks "Payable in exchange at current rates," thereby allowing the National Banks to continue receiving exchange; after seeing all this I felt that it was unfair to the stockholders of the Holmes County Bank to lose this revenue and we quit. We believe in the par clearance system when all banks are put on the same basis. I feel like Ben Tillman speaking to a Republican Senate on the Tariff Bill, that he was opposed to it, but if they were going to have it anyhow he wanted South Carolina to get her part of the steal, and I think that if other banks are allowed to get exchange that it would not be right for us to lose in this way. I realize the Government has the power to put on the par system and boycott banks that do not confirm. And when you get things in shape for it, give us the day and date and no bluff and we will promptly comply; write us frankly what to depend on (Tr., 112).

* * * * * * *

We prefer to not have our checks sent to us by express and until further notice we will remit you our New York Exchange at par for checks that are good on our bank if you will send them direct to us by mail and send postage. Trusting this will be satisfactory (Tr., 114).

* * * * * * *

By a ruling of the Board of Directors, at a meeting held Feb. 11th, 1920, it was resolved: That on and after Feb. 27th, that the Bowl

State Bank follow the custom of the other banks in the Parish and refuse to remit at par to the Federal Reserve Branch at New Orleans, La., *which is quite an imposition on us, and also a great loss.*

I understand the Bourg State Bank had consented to remit at par, and *a trial has convinced it that it cannot be so accommodating, at a detriment to its own welfare* (Tr., 115).

* * * * * * *

Referring to your recent communication with regard to remitting your Bank at par for items on us, and our reply thereto.

We note that you have adopted the policy of sending these items via Express Co. Of course, we think this policy is wrong but *we are not looking for any fight on this subject,* it isn't worth it, so therefore, we suggest that *in lieu of the Express Co.* you send them on to us and *we will of course remit you flat.* This will end *the fight* as far as we are concerned (Tr., 118).

* * * * * * *

Please be advised that effective March 1st, this Bank will discontinue paring items for the Federal Reserve Bank of Jacksonville, or Atlanta, or in fact any other Federal Reserve Bank.

Our rates on and after March 1st, will be 1/10 of 1% (Tr., 118).

* * * * * * *

In view of the fact that the Mississippi Legislature has seen fit within the past few days to pass certain acts making it mandatory on the State Banks of this State to charge exchange on cash items and further in view of the fact that we are one of the plaintiffs in the suit of the American Bank and Trust Company, *et al.,* of Cordele, Georgia, *vs.* the Federal Reserve Bank of Atlanta, Georgia, we deem it to our best interest to notify you, that beginning March the 15th, we will cease to remit for items drawn on ourselves and presented to us through the Federal Reserve Bank. We will continue to refuse to remit for these items at par until such a time as the validity of the recently enacted law by the Mississippi Legislature is tested and also await the final outcome of the suit of the American Bank and Trust Company *et al. vs.* the Federal Reserve Bank.

In other words, we are not going to continue after March the 15th, to handle items on ourselves, presented to us through the Federal Reserve Bank, at par *until we have to.* As you understand, at the time we agreed to remit for these items we were doing it under protest—*now, we see a good loop hole to escape and we are going to do it* (Tr., 119).

* * * * * * *

At the time *we were forced through coercion* to agree to clear checks for the Federal Reserve Bank at par, we informed you that we would do this subject to the actions of the courts in the case of the Georgia Bankers against the Federal Reserve Bank. We notice

that while this suit is pending you have discontinued trying to collect checks at par on them.

In common with a great many banks in the State of Florida we have asked the Georgia bankers to make us a party to the suit, and in view of the stand that we took when we agreed to clear at par we feel that you should discontinue sending us items till the outcome of the suit is settled.

If we lose the suit we will be forced to clear at par (Tr., 120).

* * * * * * *

We have concluded it would not be fair for us to remit to you at par, while we are charging other banks exchange, and for this reason request that you take us off your par list (Tr., 121).

* * * * * * *

On December 27th, 1919, we indicated our willingness and authorized you to place our name on your list of par banks in this district. We accepted your proposal with the reservations in our mind that we would withdraw our name at the first opportunity, believing that we are just as much entitled to exchange on our checks as the Government is entitled to a fee for transmitting money by post office money order.

The recent enactment by the Legislature of Mississippi of House Bill No. 654, making it a law of this State that banks shall charge exchange at the rate of $1.00 per thousand on checks and cash items not only offers us an opportunity, but makes it mandatory that we advise you of our intention to cancel the agreement we made with you to remit to your bank for all items you sent us drawn on our bank. We believe that it is fair and right that you should have some advance notice of our intention, and we think that eighteen days would be a reasonable notice to you. Therefore, please be advised that we will discontinue remitting to you at par on items drawn on this bank on and after April 1st, 1920 (Tr., 121).

* * * * * * *

Please take notice that as per our agreement with you for clearing items free of exchange, beg to advise that we wish to terminate this agreement as made by us, it being the agreement that within thirty days after notifying you this agreement would be cancelled. We are unable to handle these items at par any longer, and wish to terminate the agreement as stated above (Tr., 127).

* * * * * * *

Pertinent Extracts from Plaintiff's Oral Evidence.

J. W. Cannon.

(Tr., 166.)

Resides at Cordele, Georgia. I am connected with the American Bank & Trust Company of Cordele, Georgia, that is the origina

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plaintiff in this case—the bank from which this case takes its name. Prior to the organization of the American Bank & Trust Company I was connected with the American National Bank of Cordele, Georgia. That was a national bank. The American National Bank liquidated for cash and paid the stockholders $170 on the share and issued new stock for the new bank. The two operations were coincident. In practical effect the American Bank & Trust Company succeeded to the business of the old bank. The question of exchange was the prime motive for changing. We got exchange until the time the Federal Reserve Board put in their ruling on member banks—I believe the Federal Reserve had been in operation about three years at the time we surrendered the charter; we had a national bank charter for eleven years.

The national bank, under the system put in effect by the Federal Reserve system, was bound by the regulations and had to remit cash items at par. *While the name of our bank was on the par list, fully 90 per cent of cash items drawn on our bank and held outside of Cordele came back to the bank for collection through the Federal Reserve bank and its branches. After the change* was made and we became a State bank, our name was not carried on the par list of the Federal Reserve. *Thereafter none of the cash items held outside came for collection through the Federal Reserve banks*, except such items as were payable by the Government, which we remitted at par; that constituted about 1 per cent of our business. *The others came directly through the banks and clearing-houses of various cities.*

MARK W. MONROE.

(Tr., 168.)

Quincy, Florida. President of the Quincy State Bank since 1892. That bank is not a member of the Federal Reserve system. I was approached by the Federal Reserve bank with the request to sign an agreement to remit these items at par. When they first put the threat out that they were going to use the post-office on us, we did not know how big a bear they had in the woods, and we agreed temporarily to clear them at par, until we found out how bad it was, and we discontinued it after a short time. I mean by threat that they would use the Post-Office Department, but when it was determined by the Department that the post-office could not be made the agency for the collection of those items, we discontinued it. I didn't know how bad it would be for all the items to be congested through the post-office, and demand the cash; they might catch us shy sometimes. We had experience later on with them, in 1920. The checks were then presented by the express company through a special agent, who presented the first batch. His name was Hunter—a sort of route agent or auditor. February 12, 1920, was the date. I couldn't tell you exactly how many were there—a stack about that high; a hundred or more; for account of the Federal Reserve Branch at Jacksonville, Fla. The aggregate amount in dollars was twenty-

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seven thousand six hundred sixteen dollars and eighty-six cents. I *think there were upwards of a hundred in one batch.*

The circular letter came out, stating that they would use any means to collect them, and the newspapers had reports that the express company would be used, and we fortified ourselves. We *shipped in currency.* Our ordinary balance of currency required was forty-five or fifty thousand dollars, but we had shipped in currency and had on hand seventy-five thousand dollars or over. On the 13th day of February, 1920, there were two letters presented to the local agent for collection from the Jacksonville Branch of the Federal Reserve bank, one letter containing items totaling $9,793.8[illegible] and one letter containing $8,256.00—*a total of $18,149.95*—making *a total of over $45,000 in two days.* There was a big bunch of them on the 13th, *possibly fifty or sixty checks,* in the two letters. On February 13, 1920, at the close of business, our deposits were $1,23[illegible] 485.85 in the regular course of business. To illustrate how average daily letters came: *On February 14th* the Federal Reserve bank sent a regular collection item, which amounted to $3,461.46—to show you how the items came through the regular channel. On February 16th they had discontinued the use of the express company; *on the 16th* they sent for collection through the mail, like any one else, a letter which contained $926.09, on which we charged 93 cents; on March 10, 1920, the Jacksonville Branch sent an item of $714.6[illegible] the charge was 44 cents; on April 12, 1920, there was an item came in, a cash letter, for $1,278.22; the charge was $1.28; on May 1[illegible] 1920, there was a cash letter for $1,489.40; the charges were $1.5[illegible] Those are what would have come regularly into their hands. Our source of supply of currency is Jacksonville, Fla., one hundred and ninety miles distant. We have two trains daily each way, but the only way we can get money is on the 4:30 train in the afternoon. There is no possibility of increasing our supply of currency after the bank opens in the morning. The train leaves Jacksonville at 4 o'clock in the morning, and if we had the demand made today we could not replace it until tomorrow afternoon. *As the result of our experience just detailed, we had to increase our supply of cash;* we ran up to seventy-five thousand dollars, to where we were ready for them on that, when those larger items came in, you see. On the 11th of February we had cash in the vault, $74,247.47; on the 12th when they dragged us with the big bunch of checks, that left us cash $36,272.72; on the 13th we had left $24,862.67, and on the 16th we had $99,800.68. We had increased our currency by shipping it in and from then on *we succeeded in maintaining it from ninety-nine thousand to a hundred and ten thousand, until the menace had passed.*

When that bunch of one hundred or more checks was presented to our bank the route agent of *the express company asked for payment in cash.* There was no suggestion that we pay him in exchange. We have been mixed up in that kind of rows before and we were fixed for him and never asked any favors at all. *He demanded the cash.* We have to carry our reserves in cash or cash balances and are permitted to carry State, city, or municipal bonds. Our reserve

is 20 per cent of our deposit. The usual amount of currency carried was thirty-five to forty thousand dollars.

My position is no one has any right to require another to work for another at an expense to himself and feed himself. A heavy expense is thrown on a bank to maintain this department. And another feature is the Federal Reserve banks are meddling in a matter that does not concern them.

Whenever you run a bank, and a man brings a check and puts it across your counter, you know he wants money, cash. If he wants anything else he says, I want exchange, or a cashier's check, but until he says that, when he puts it across there, that is an implied demand that he wants the money. *No solvent bank can stop to quibble about things like that; that is understood and that is the reason we fortify ourselves with the cash.*

We get 2 per cent on New York balances; 3 per cent on Atlanta balances; 3 per cent on Savannah balances, and 3 per cent on all balances in Jacksonville except with one bank, and that is 4 per cent. We never send that bank anything in the way of collection items. When we had to increase our cash in bank it diminished the interest earning on about $60,000. It will diminish our lending capacity by the amount we have to carry in cash.

L. P. Pattillo.

(Tr., 137.)

President of Bank of Buford. I am familiar with the so-called par-clearance campaign in this district. I had a conversation with Mr. J. A. McCord before the circular letter of December 23, 1919, was sent out by the Federal Reserve Bank of Atlanta to non-members. In the conversation somebody asked me if I had ever joined the Federal Reserve bank, and I told them I had not. Mr. McCord put his finger out at me that way (indicating, pointing his finger) and said, "You will join."

After that we got the memorable circular letter. *They said it was their purpose to enforce it. That they were going to adopt the plan set out in this circular letter; if they couldn't do it one way the idea was to do it another;* if they couldn't do it by some way, *they would force us.* I think Mr. Wellborn was with us. As a result of that effort to have an understanding with the Federal Reserve bank, we got no satisfaction. They seemed to persist in carrying out the plans; that was their idea. They seemed to be getting ready for it all the time.

Albert M. Tumlin.

(Tr., 154.)

Cave Springs, Ga.: I am president of the Bank of Cave Springs. It is a State bank and now a member of the Federal Reserve system.

I think it was admitted in December, 1919. The matter of joining had been under discussion off and on; I had known Mr. Wellborn for years; I met him at the bankers' meeting and he mentioned it to me and thought it was a good thing. *The main thing that bothered us was par clearance.* I talked with Mr. Wellborn in the summer before I think. Just before we went in we increased the capital stock to twenty-five thousand dollars and twenty-five thousand surplus. The capital prior to that was fifteen thousand dollars and the surplus went on up to about eight or ten thousand.

We knew we would have to increase our stock to become a member and the par clearance question was becoming so pressing that it looked like we had to do something. I had a conversation with Mr. McCord as to the intention and purpose of the Federal Reserve bank just before we joined. Mr. McCord is chairman of the board. I had that conversation in his office in Atlanta. I had been appointed to fight par clearance; I had been appointed one of a committee of seven and I had several banker friends on it, and *it looked like we were going to be forced in from what Mr. McCord said, and what he did. He said they were going to put on the par clearance campaign* and it would be put over and we would have to go to par clearance. *that they were going to force it through, and go to collecting at the counter and I said that would ruin any bank* you know—they could not carry enough money, the Cave Spring Bank or any other bank to do it—*and he said I know it.* He concurred in that statement and said he knew we could not, and I agreed with him. *That is the reason I joined;* that is not all the reasons, but the greatest reason. *our greatest loss was on the question of exchange. Our average revenues from exchange were nine hundred dollars*—about. As to keeping a deposit in the Federal Reserve bank of an amount sufficient to meet all items in float, the greatest trouble is deferred credit. After we went into the Federal Reserve, it was one of our greatest troubles.

Mr. McCord talked very freely, and we both come to the same conclusion about the matter. *He said they were going to put it on; that all the rest of the districts had, or were going to do it; they had the instructions*—I do not know that he said from Washington; it has been two years ago, and I could not say positively what all happened, but we both arrived at the same conclusion—if they put it in, what it was going to do; I had no doubt about it then. Mr. Adams asked me what I joined for, and I said I can't fool with you fellows any longer. I can't serve on the par clearance committee because I have got to clear at par. I do not remember all that was said. I then retired from the committee and all its activities with reference to the campaign of the country banks. I could not join one thing and keep on on the other. *While I thought we ought to have our exchange still I quit, because I thought we had to.* That was on the idea that we took the lesser of two evils you might say; *if we could have kept the exchange I would not have joined;* that is the truth about it.

I became convinced that we could not do anything else; *that they were going to put par clearance over, he said so.* He said that they had it to do as they construed the act; and I think he was trying to do his duty—what he conceived to be his duty. He convinced me

that they would have to do it. *He convinced me* what he was going to do—*that he was going to make them do it—that's all.*

I am a member of the Federal Reserve system, but I do not believe it is right to make a country bank clear at par. I do not care what the law says.

It was all right, as long as the Federal Reserve didn't put the screws on, and say they were going to collect over your counter, or send it by express, we could go ahead and defy them and get our exchange; *but the minute they did that*—these other gentlemen, I talked with them, I was working for what I thought we had to do; *I don't like to be held up and made to do a thing.*

Q. There is nothing to prevent you from requiring your depositors, when they deposit a check—nothing to prevent you from deducting interest on the amount for the three days, or the number of days that check is out?

A. *Yes, sir, there is the greatest reason in the world; anybody knows that a country bank could not consider it.* You men who live in town may be able to do that; but you say to a countryman that he must put up that money, he would be outraged; that I know. A big bank has got their own resources; a big bank could stand it. My bank has seen the time if it hadn't got the exchange it could not have paid one man to stay there and attend to it; take a little bank, with little deposits and it can't do it, and *you talk to a farmer about charging him and he will put his money in his pocket.*

P. R. Kittles.

(Tr., 160.)

I am one of the Class A directors in the Atlanta Federal Reserve Bank; have just finished my fourth year. I remember in 1919, when the directors had several meetings during that year, and then into 1920, and had up for discussion at various times the par-clearance campaign in the Sixth District. In the meeting of December 11, 1919, the subject seems to have been dealt with at some length, and I am quoted as stating that while I was not in favor of par clearance, if it was the law we should proceed to enforce it; that was my position at that time.

We had a map, which was exhibited, showing certain sections clearing at par, and further than that I had no particular information from any one. My general understanding was that practically no effort had been made to clear at par in this district. I was advised that successful efforts had been made in some of the other districts, as shown on this map; but some of those shown had been par for some time; some of them had been for years. Every effort was made to work out some co-operative friendly plan. I suggested that we send to these non-member banks items drawn on them, feel them out and see where they stood—*see what opposition we would have in par clearance before we tried to enforce it.* That is the plan known as the Kittles plan.

I understood that under the law we were compelled to coll these checks and incur any expense to go out and collect the When we finally came to vote on the question we were advised counsel that it was mandatory.

Many of the board took the position—rightfully, I think—th where there were two banks in a country town, one a State ba and one a national bank, and the national member bank had to co ply with this par-clearance regulation, that it was necessary, in or to conserve the interest of the member bank, the man already rem ting at par, to have the non-member do likewise.

Q. Wasn't it suggested to send checks out, and to have them p sented at the counter for payment in cash, and that they could n stand that and would have to come in—in plain English, was not th the purpose?

A. Perhaps that was ultimately contemplated; perhaps it was d cussed.

Q. It was just understood?

A. The Atlanta Clearing-House discussed it, yes. I understo that, I don't know whether the others did or not; my training in t Atlanta Clearing-House did it.

Q. Did not you decide on it as a policy and give these instructi for the purpose of carrying out that policy, *that these checks on no assenting banks would be presented either by a special agent or the express company, and the cash demanded?*

A. *I guess the correct answer to that would be that it was ul mately contemplated.*

According to my country experience, *I contemplated that;* I f that that was what it was; I don't know how they regarded it, bu *felt that that would be the ultimate result.*

E. V. Tidwell.

(Tr., 167.)

I am cashier of the Atlanta Clearing-House. I supervise the c lection of checks on country banks in eight Southern States. T collection agency for the clearing-house is operated by the memb of the Atlanta Clearing-House Association. The privileges of t Collection Bureau in the clearing-house proper is that of a mem of the clearing-house. These checks are delivered to me for c lection twice a day. They have until 11 o'clock in the morning a 3 in the afternoon for deliveries. The average rate of exchan the cost to the collection bureau of handling out-of-town checks, p one thousand, was $1.21 in 1919. That is just the cost of exchan In 1920 it was $1.18.2. In 1921 it was $1.11.9. The banks, t members of the association, pay it, according to the amount th put in. The amount which each bank pays is determined by t amount of checks placed in my hands for collection. The other e pense attached to the collection bureau is overhead expense. Th is apportioned according to the number of items. One is accordi to the face value of the checks and the other according to the nu ber of items.

This cost that I denominate exchange cost is to reimburse the clearing-house for the charge made by the banks on which the checks are drawn. That is the average during the year. We collect that for them and remit it to them; they charge us for checks. I simply reimburse myself that way. The overhead cost in 1920 was 1.2 cents per item; in 1921 it was 1.4 cents per item. If the drawee banks of these checks had charged no exchange these last items would be all the expense of conducting the clearing-house.

As to the clearing-houses about which I testified, in response to questions of counsel on the other side, I thought he had reference to clearing-houses that had a collection bureau. They are the only ones about which I testified.

W. J. Stover.

(Tr., 137.)

Cashier of the bank of Cassville. The amount of revenues from these exchange charges was $332.61 in 1919. The bank ran at a loss of $183.37 that year. The receipts derived from exchange during the next year were $302.74 and the net earnings were $977.84. Revenue from exchange in 1921 was $105.00 and net earnings $201.48.

W. E. Greene, Jr.

(Tr., 140.)

I am cashier of the Farmers & Merchants Bank, Junction City, Georgia. For 1921 our earnings from exchange were $733.23; gross earnings, $6,644.69; expenses, $4,021.40; that is as to the last fiscal year. For the year preceding that, to March 31, 1920, the gross earnings were $7,513; the net earnings, $3,030.95; earnings from exchange were $858.89; expenses were $3,697.78. For the year preceding that, ending March 31, 1919, gross earnings were $5,039.38; expenses were $2,789.38; net earnings, $2,350; exchange $731.05.

E. S. Strickland.

(Tr., 143.)

I am president of the Alma State Bank, Alma, Georgia. Our receipts from exchange during the year 1919 were $543.13; gross earnings for that year, $9,395.82; expenses, $9,049.13. The amount stated as exchange receipts is included in the gross earnings. For 1920 our gross earnings were $9,838.91; the amount of exchange, $595.49; expenses, $7,540.10. The figures, as far as I have them, for 1921, nine months, are: Gross earnings, $11,604.38; exchange, $852.47; expenses, $11,348.58.

W. I. Bennett.

(Tr., 146.)

Cashier of the Bank of Trion, Trion, Georgia. The year 19[illegible] the exchange receipts were $164.37; the expense account w[illegible] $1,162.91; the net earnings were $2,492.89, without a dividend b[illegible] paid.

For the year 1914, interest and discount was $3,566.42; exchan[illegible] was $391.11, less expenses of $1,073.70; the net earnings w[illegible] $2,883.84, without a dividend being paid.

The year 1915 interest and discount were $2,443.21; exchan[illegible] was $301.04, less expenses of $1,252.45; the net earnings w[illegible] $1,491.80.

During the year 1916 interest and discount, $4,306.72; exchan[illegible] was $588.78; less expenses of $2,227.29; the net earnings w[illegible] $2,667.51.

In 1917 interest and discount, $7,428.92; exchange was $837.6[illegible] less expenses of $3,264.55; the net earnings were $5,002.00.

1918, interest and discount, $7,439.09; exchange, $1,520.41, l[illegible] expenses of $4,207.40; less furniture and fixture depreciati[illegible] $117.37; net earnings, $4,634.73.

1919, interest and discount, $10,463.20; exchange, $1,311.50, l[illegible] expenses of $4,847.83; less furniture and fixture depreciati[illegible] $223.00; the net earnings, $6,703.87.

1920, interest and discount, $14,895.68; exchange, $1,521.98, l[illegible] expenses, $6,934.77; less furniture and fixture depreciation, $272[illegible] the net earnings were $9,210.68.

For 1921 interest and discount, $11,684.63; exchange, $1,092.[illegible] less expenses, $8,983.73; less furniture and fixture depreciati[illegible] $249.49; less worthless accounts charged to profit and loss, $209.[illegible] net earnings, $3,135.18.

This makes total earnings for the period of $38,222.50, of wh[illegible] amount $7,729.63 was exchange; or, 20 22/100% of our earnin[illegible] for the nine-year period was exchange.

B. F. Rawles, Jr.

(Tr., 153.)

I am a banker at Colquitt, Ga. The receipts of our bank fr[illegible] exchange during the year 1921 were a little less than $250; I thi[illegible] $242 and a few cents; net earnings, $1,100 and something. I[illegible] ceipts from exchanges during the preceding year, somewhere al[illegible] fifty or sixty dollars.

L. R. Adams.

(Tr., 197.)

I am secretary of the Country Bankers Association of Georgia, ince the organization of the Association.

Q. Mr. Adams, state whether or not before the letter of Decem- er 23, 1919, sent out by the Federal Reserve Bank of Atlanta, was romulgated, you had any information as to the intention of the ederal Reserve bank to inaugurate the campaign for par clearance?

A. I did.

Q. When did you get that information?

A. I had a conversation with Mr. Wellborn in his office.

Q. At whose instance?

A. At Mr. Wellborn's request.

Q. He requested you to call on him?

A. He did.

Q. And you had a conversation with him?

A. Yes, sir, quite extensive.

Q. On that subject?

A. Yes, sir, on that subject.

Q. What was his purpose in conferring with you as to the attitude f the country banks?

A. It seemed that Mr. Wellborn wanted to know what the attitude f the country banks was going to be when the Federal Reserve bank ndertook the enforcement of par clearance in the Sixth District.

Q. He knew your official relation to the country banks of Georgia?

A. Yes, sir.

Q. At the conclusion of that conference, please state in substance hat Mr. Wellborn said to you on that subject?

A. As I rose to leave Mr. Wellborn's office after the conference, hich lasted quite some time, he said, "Adams, according to what ou say we had just as well get ready for a fight."

Q. What was your reply?

A. I said, "yes, that is true, and while you are getting ready we ill get ready."

Abstract of Defendant's Oral Evidence.

L. C. Adelson.

(Tr., 176.)

Atlanta, Ga. I have been deputy governor of the Federal Re- erve Bank of Atlanta since March 1, 1919. Prior to that time I as assistant secretary to the Federal Reserve Board. As deputy overnor, I have general supervision of the operating departments f the bank. *I have had active participation in the so-called par- learance campaign of the Federal Reserve Bank of Atlanta.* It was urned over to me to lay out the plans and submit them to the other

executive officers and the executive committee for their official i termination. I did so. *I had charge of the correspondence on t subject.*

I heard the testimony of Mr. Mark W. Monroe, of Quincy, Fl At no time, under my direction, or, so far as I know, under a body's else direction, were orders given to the express company accumulate checks and present them *en masse* for payment. Th was no design to accumulate them for the purpose of embarrass the Quincy State Bank. That policy has been pursued only in few similar instances, as stated, where several letters had been s down and they did not remit at par, and when they were return to the bank we sent out a man, in order to relieve our liabilit soon as possible; the liability that arises through negligence in h dling checks, and that might be construed by the court, if it co to an issue, by holding these checks a long time—we might be charg able with negligence.

Cross-examination:

Q. Mr. Adelson, you wrote a number of letters late in the y 1919 to the banks throughout the Sixth District, or rather you u istered to these banks a form letter, dated December 23rd or 24th I don't know which date you used—attached to this bill as Exhi B, enclosed in that a letter from Governor Harding, of the Feder Reserve Board, attached as Exhibit A?

rection. I had general supervision of that.

A. Yes, sir; it was sent out by the mail department under my

Q. You sent out more than a thousand of them, did you not?

A. I do not recall offhand the total number.

Q. A very large number; your exhibit shows 1,050. Is that accord with your recollection?

A. I could not state positively; there must have been in th neighborhood. I received various and sundry answers to that lett Some agreed to remit at par. Some said they did not want to rem at par; others did not reply. Those who refused to remit at par wrote follow-up letters specifically in reply to those from whom received a reply to the letter of December 23rd. In a number these letters I stated if they did not reconsider and agree to remit par that it was our purpose to send these checks out for payment currency over their counter; I think I said something like that.

The letter of July 12, 1919, as a form letter was used in connecti with the par-clearance campaign (App., 32).

It was sent to banks at that time not remitting at par. In th letter I stated that the twelve Federal Reserve banks are uniting their efforts to bring about the establishment of a national par l and that rapid strides are being made in that direction. The Fe eral Reserve Bulletin each month shows the number of banks adde to the par list. I kept in touch with it; I kept myself informed that subject. I knew what progress was being made in the oth districts; that was obvious, from the number of banks reported. that time we were not making any progress in this district, th might be termed rapid; on July 12, 1919. At that time *the ca*

sion of the par-clearance banks was one of my duties, and this letter was one of the things I began to do to hasten the progress of the campaign in this district. From what I could see in the Federal Reserve Bulletin—each bank adding a number of banks each month—they were extending their efforts. That is the only par list in the United States; it is printed by all banks; it is printed in Washington, only the central source, where each of the Federal Reserve banks list their additions and withdrawals, and for economy it is sent to the Federal Reserve Board, and each bank is listed with its pro rata of the cost. Information sent by the several banks is accumulated there and printed. It includes the par list of all the banks.

I and my subordinates, or associates, furnished to the Federal Reserve Board at Washington, the information necessary to compile this list and reports every month. When we put a bank's name on that list, that information is distributed to every Federal Reserve bank, and every branch in the United States. *This par list goes to member banks of the respective districts, whether State or National. A State bank that is a clearance member would receive a copy also.* The member banks are charged nothing for the par list; they are furnished them free by the Federal Reserve bank of their district, and as many as they ask for. Barring some slip or failure to ask for it by some bank here and there, *this par list goes into every bank in the United States that is a member, or clearing member of the Federal Reserve system.* That is true also as to the monthly exchange sheets.

Prior to the appearance of a bank's name on this par list, no items drawn on that bank come through the Federal Reserve bank, unless they are payable to the Government, except occasionally an item from the transit department of a commercial bank is misrouted to the Federal Reserve. That would be by mistake.

After a man's name goes on this list, if he is in our territory, we get checks drawn on that bank after the list has had time for circulation; we get a percentage of the checks drawn on that bank that are afloat. I would not say that we get practically all the checks that pass through any member of the clearance system.

The placing of a man's name on this par list that goes all over the United States, *has the effect or tends strongly to have the effect, to converge into the Federal Reserve banks of the district in which any bank happens to be doing business, a percentage of foreign checks.* I could not state, definitely, what percentage; it varies. I never gave any order to the express company to accumulate checks on this bank in Florida. They could accumulate them if they gave them two or three packages of checks; different packages that were held for several days by this bank. It would be an accumulation of several packages after the bank itself had held them. If all the checks I receive in one day are forwarded the same day there is no accumulation. If I sent a runner around town to everybody who deposits in the Atlanta National Bank and had them send their checks to my office, I would not call that an accumulation on the Atlanta National Bank if I presented them the same day. I would merely call it a convergence of checks. I see a difference between concentration and

accumulation. I could not state how many banks' names I ha sent to Washington to be put on this par list that have not giv their consent. I put on a few at one time in January, 1920, rig after that letter went out.

Mr. Tutwiler was sent to Dothan—he had formerly lived there to present these checks for payment; he presented them at t counter of the bank and the cashier immediately paid him cash and at the same time he showed to Mr. Tutwiler a large de covered with old torn one-dollar bills, and told him we have be preparing for this, and we will try to wear you out with that ki of currency.

I don't know the exact number of days he was retained at th place; it was not a great while. The Dothan Bank & Trust Co pany later intervened, and upon receipt of notice that they had i tervened, we stopped him. *The temporary restraining order com me to withdraw him.* He had been there several days. He was se there from the Atlanta office.

The mere fact that a bank's name appears on the par list does n mean that that bank is voluntarily remitting at par; it means it is bank on which we are able to collect. It does not mean necessari that it has agreed to it. It does not mean that we are able to do without expense; it may be that we might have to employ an age or express company and charge as general operating costs. A ban has not voluntarily agreed to remit at par merely because its nam appears on this list; it may be through some other channel.

M. B. Wellborn.

(Tr., 186.)

I am Governor of the Federal Reserve Bank of Atlanta, sin March 1, 1919. I am the chief operator of the bank; charged wi the operating department of the bank; chief executive officer. I a familiar with the so-called par-clearance campaign. I have never any time during my incumbency as governor authorized or direct the accumulation of checks upon a non-member—a non par-remi ting bank and their presentation in mass at the counter of the ban for payment. *As between having to pay all checks in currency o the counter, and having to forego their rights to charge exchang remitting at par is the lesser of the two evils.*

Q. Did I understand you correctly, Mr. Wellborn, that the co clusion you came to and expressed in your answer to the sixth int rogatory was arrived at between the time the bill was filed and t time the interrogatories were answered?

A. Yes, that policy was decided upon some time this past year.

Q. Mr. Wellborn, I want to ask you whether or not, if the Fe eral Reserve bank—if you were a country banker, and the Fede Reserve bank was to take all checks received by it as the result of t drawee bank being on the par list, and send a special messenger the counter of that bank and demand payment in currency o the counter, would you consider that that would be an expensi

embarrassing and annoying process for the drawee bank; or would it be either embarrassing or expensive or annoying, or any two or more of them?

A. I should think it would be to some extent; yes, sir.

Q. What do you mean by some extent?

A. Well, *it would cost them more than they could afford to pay.*

Q. There would still be some expense?

A. Yes, sir.

Q. *And it would be annoying and embarrassing to that bank for a special messenger to walk in with these checks and present them at the counter?*

A. *I should think it would; yes, sir.*

Q. Suppose that one of the plaintiffs in this case was informed that the defendant expected to employ a special agent in the town where the bank was located, to whom there would be mailed daily checks on that bank that came through the Federal Reserve bank, by reason of that bank's name being on the par list, whose instructions were that he should present those checks at the counter of that bank and demand payment in currency; would you, or not, consider that method of collecting checks, if carried out, would prove expensive, embarrassing, annoying, either or both, or all three?

A. *My answer is that I think it would be expensive and be annoying.*

Q. And embarrassing?

A. *And embarrassing.*

One of Mr. Adelson's letters contained the statement: "On account of the large number of non-par remitting banks in the Sixth Federal Reserve District, it is not possible for us to arbitrarily commence collections at par on all the banks at one time, and therefore we have to go about it by setting off certain areas to be taken up at a time. As soon as we are able to make necessary arrangements in your city, we will again place the name of your bank on our par list and begin collecting items by presenting them for payment in cash, unless you will advise us that you will remit at par. Should we find it necessary to arrange to present items at your counter, payment will be demanded in cash only." That is the letter; receiving nothing but cash, regardless of the channel through which it is presented—a continuous performance, with the bank's name on the par list without its consent. *State whether or not that would be an embarrassing, annoying and expensive method of collecting checks on the payee banks.*

A. *Yes, sir; I think so.*

Q. And would be expensive, annoying and embarrassing to the Federal Reserve bank also?

A. Yes, sir.

Q. *Would it not be very much more expensive than the ordinary rate of exchange?*

A. *I think so.*

Q. Would it not be several times more expensive than to send down the checks and pay one-tenth of one per cent?

A. Perhaps so.

Q. Mr. Wellborn, you know Mr. L. R. Adams?
A. I do.
Q. Of Atlanta?
A. Yes, sir.
Q. You know he is the secretary of the Georgia Country Bank Association, and has been since the organization of the association?
A. Yes.
Q. Did not you have an interview with Mr. Adams on this subject of par clearance shortly before the bill was filed—at your office at the Federal Reserve bank, where the whole subject was discussed at length?
A. That interview never occurred with me at all that I can recall; it never come to my mind. That committee of the Country Bankers Association, called on me after the meeting of our directors authorizing us to put in this par clearance system; it was after the meeting they came; that is my recollection.
Q. What was the subject of that interview?
A. They discussed the matter of banks not paying exchange, paying exchange or remitting at par, and that it would be injurious to them if they had to remit at par. I remember the reply I made to them was that a good many small national banks were in the system, and that they were not collecting exchange on remittances, and it was not hurting them; that none of them had gone out of business, not a single one that I know, and I did not think that if this went into effect it would affect them as materially as they thought.
Q. *You admitted it would deprive them of some revenue on exchange?*
A. *Yes, sir; I did admit that.*
Q. *In other words, they would be wounded, but not killed?*
A. *Yes, sir.*
I do not know what they came for; they seemed to want to talk about it; I am willing to talk to anybody about anything, especially when they call on me. I recall Mr. Harvey, or one of them, I do not recall just which one, remarking that he thought this was inevitable all over the country, and he did not see any use in the country banks opposing what seemed to be inevitable.
Q. *That it was better to bow to the inevitable?*
A. *Yes sir, as the French say, bow low, if you bow at all.*
The letter copied as Exhibit "B" to the bill was prepared by *Adelson. He was appointed to take charge of this matter;* but reading that letter, before I signed it, I did not attach very much importance to those particular words. My own idea in sending the letter was to impress upon them the advantages that would accrue to them, the facilities par clearance would afford and get them to accept the invitation to come in. In regard to those words quoted, I do not attach, as I said before, any significance to them, because I did not intend to embarrass or annoy them, or break them up or anything of that kind, and I am sure our directors did not; I was governing through the directors of a bank.
Q. Did you expect the man who received that letter to think you were just bluffing and did not mean it?

A. No; I thought they would see from the letter the idea that we had postponed so long putting it in effect. *And now we were prepared to go ahead and do it;* I thought a great majority of them would acquiesce, in fact I did not think there would be much opposition to it.

I think it was ten days or two weeks before these words were called to my attention, by someone outside; said the banks were taking exception to these words. I was really surprised and went back and read the letter to see the view they took.

Q. You never wrote any follow up letter then?

A. No. Things fell so fast and furious that I did not have time.

Q. Didn't you hear read here, letters by the score, from Mr. Adelson, where substantially the same thing was used by Mr. Adelson?

A. I did not keep up with it. *I back up anything that Mr. Adelson did.*

Abstract of Testimony that was Rejected.

George D. Wood, Brookings State Bank—Unusual methods of the collection of cash items upon a bank that declines to remit at par the proceeds, without any charge for exchange, embrace such things as assembling together a large number of checks and presenting the some over the counter of the bank on which they are drawn for payment in currency, accompanied by the refusal to accept anything in payment but currency; that among such methods of collection, out of the ordinary, there have been the return of checks drawn on such bank, even before presentation, with notice of dishonor, and that that notice, instead of being sent to the endorser of the check from whom it was received by the Federal Reserve Bank, was duplicated and sent to the payee, or to the drawer of the check, being the depositor of the drawee bank; that among other such methods, actually experienced by this witness, in the unusual methods of collection against non-par remitting banks has been the return of the check before presentation for payment to the bank upon which it was drawn, and that on the check was the notation that the bank was closed and out of business, and the check returned with that notation on it; that among other embarrassing, annoying and expensive methods employed against a State bank, has been the stationing of an agent in the town where the State bank is located, who ostentatiously takes the checks of that bank to the counter, and takes the currency and counts it in the presence of the customers of the bank, and who undertakes to create the impression that the bank is in financial difficulties, thereby greatly discouraging and frightening the customers; that all of these methods have been employed against this particular witness' bank by the representatives of the Federal Reserve Bank of San Francisco who offered to abandon and withdraw them all if the witness' bank would agree to remit the proceeds of cash items without exchange, and make that agreement indefinite and continuous (Tr., 350).

Ernest Meek and *Charles Rous*, Catlettsburg, Ky., cashier and assistant cashier of Farmers & Merchants Bank of Catlettsburg, since

its incorporation in September, 1916, and in the capacity of Cashier and Vice-President since that time (answering separately).

Said bank is a state bank, organized under the State Banking laws of the Commonwealth of Kentucky and is not a member of the Federal Reserve system. It has never signed any agreements with the Federal Reserve Bank of Cleveland or any other Reserve Bank. Said Farmers & Merchants Bank has never consented to have its name placed upon the par list of the Federal Reserve Banks and particularly of the Federal Reserve Bank at Cleveland. It is located in the Fourth Federal Reserve District. Said bank has been accustomed to keep its reserve accounts in its correspondents' banks in Cincinnati, to-wit: The Fifth National Bank and the Third National Bank and in its correspondent bank in New York City, The Hanover National Bank. It has been accustomed to receive two and one-fourth (2¼) per cent interest on the daily balance in said Reserve accounts.

The custom of charging exchange has been in force with this particular bank, since its organization, your deponent has been engaged in the banking business in this locality for thirty (30) years and such exchange charges have been customarily made during all of that time by every bank, whose business was known to your deponent. The Federal Reserve Bank of Cleveland inaugurated its campaign about Jan. 1, 1920, to have all banks in said Reserve District whether members of the system or not, remit for checks drawn upon them without any deduction for exchange.

It first sought to obtain the consent of the non-member bank, Farmers & Merchants Bank of Catlettsburg, by correspondence, setting forth the merits of par clearance as the said Reserve Bank saw them and later it sent its agents and representatives in person to expound and explain the merits to said Farmers & Merchants Bank and finally it sent its agents, who threatened to use means of collecting all the checks upon the Farmers & Merchants Bank in cash over its counter. The Farmers & Merchants Bank still declined to enter into an agreement to clear checks at par. Then the said Reserve Bank collected all checks upon the Farmers & Merchants Bank in cash over its counter through the agency of the American Railway Express Company. The Express Company ceased to handle these checks for collection and the defendant appointed a local agent, resident in Catlettsburg and through said local agent, presented all checks that came into its hands, drawn upon the Farmers & Merchants Bank and demanded cash in payment over its counter. The Farmers & Merchants Bank, in order to protect itself against the Reserve Bank in its effort to exhaust the cash from its vault, stenciled all blank checks furnished its depositors, with this endorsement: "Payable in cash or exchange draft at the option of the Farmers & Merchants Bank of Catlettsburg." On all checks presented by the Reserve Bank, which bore this endorsement the Farmers & Merchants Bank gave an exchange draft upon its Cincinnati Reserve in payment therefor. This exchange draft on its Cincinnati correspondent was to all intents and purposes the same as cash to the said Reserve Bank, except that it did not accomplish the said Reserve Bank's pur-

pose of reducing the cash in the vaults of the Farmers & Merchants Bank. The Reserve Bank continued to present checks and demand cash in payment over the counter for one year and six months.

After Dec. 23, 1919, instead of out of town checks, or checks owned outside of Catlettsburg and drawn on the Farmers & Merchants Bank coming through the regular channels from the various banks owning said checks and from our regular correspondent banks, these out of town checks were all accumulated and collected by the Federal Reserve Bank, with the exception of a very few, which continued to come through our correspondent banks, and were sent beginning January, 1920, to the American Railway Express Company for presentation and payment in cash over the counter (Tr., 363).

Copy of written instructions to the Express Company attached as Meek Exhibit No. 3 (Tr., 372).

The Federal Reserve Bank of Cleveland the latter part of Dec., 1919, sent this authorized representative, M. C. Magee, to solicit my agreement to par clearance. M. C. Magee first came to Catlettsburg, in December, 1919, and attempted to persuade your deponent, the Cashier of the Farmers & Merchants Bank to agree to clear checks at par. Failing in his efforts to obtain such an agreement, he then made a demand, as a matter of right that the Farmers & Merchants Bank consent to clear checks at par. *This demand being refused him he then threatened to injure and destroy the business and business reputation of the Farmers & Merchants Bank and stated that they would put the Farmers & Merchants Bank on their par list, obtain possession of all of its out of town checks, present such checks at its counter and demand of it payment in cash therefor. And he stated that no bank on earth could stand such a method of collection.* He gave out at drug stores, at the Postoffice, at the Express Office, that he was a government agent, a Federal Reserve Man and left the impression with the citizens of the small town of Catlettsburg that he occupied a place of authority with the United States Government. He then inquired of the clerks in the United States postoffice, local express office and in the drug stores and mercantile stores about town of and concerning the business reputation and financial standing the Farmers & Merchants Bank, of its officers and employees and left the impression among the citizens of the town that the Farmers & Merchants Bank was in financial distress and that he, as a representative of the Federal Reserve Bank, was in Catlettsburg for the purpose of protecting the interests of said Reserve Bank.

The said Magee created scenes and disturbances in my bank in connection with the collection and presentation of the items held by the Federal Reserve Bank of Cleveland and sought or made an opportunity, almost every time a depositor came into the lobby of my bank, of creating or starting a disturbance with the very evident purpose of leaving an impression with such depositor that would be unfavorable and injurious to my bank's credit.

As a result of Mr. Magee's statements, a number of our depositors took their accounts to our only competitor, the Kentucky National

Bank of Catlettsburg and our business was suffering severely. W were not able to lend much cash, by reason of the demands of th Federal Reserve was making upon us. His actions required us t maintain a very excessive cash reserve in our vaults as we were hav ing no way of knowing what demands would be made on us from da to day and at the same time we had to maintain reserves with ou correspondent banks for the same reason. Our situation becam known to the community at large and investigation was made by Grand Jury of Boyd County and indictments returned against M Magee for circulating statements derogatory to my bank, which made a penal offense by the Statute of Kentucky.

Mary B. McCall, continued to present and collect checks.

Miss McCall presented all checks sent by the Cincinnati branc of the Federal Reserve Bank of Cleveland and presented the sam daily at our counter and demanded cash in payment thereof. Mis McCall came to my bank equipped with a gocart, in which to plac currency and cash collected by her in payment of the checks accumu lated. She carried sacks, in which to place the currency and coi and seals and blank papers. She assorted and listed her cash in th lobby of my bank and placed it in these paper bags and carried from the bank in the gocart in plain view of my bank's deposito and of the citizens of the community, which had every injurious e fect upon the credit of my bank that a "run" upon it would have ha Said McCall, Magee and Express Company each refused to acce draft in payment of items upon which they claimed to be entitled demand cash although we offered to make the draft in full for th face value of the items without deducting exchange of any kin By reason of the methods I have described, seeking to compel u to sign the par clearance agreement, we have lost in exchange a least eight or nine hundred ($800-$900) dollars a year. We ha lost a number of depositors, who moved their accounts by reas of the campaign by the Federal Reserve Bank of Cleveland. W have lost earnings on loans by reason of the necessity for keepin an excessive amount of cash in our vaults to meet the daily cas items presented by the Federal Reserve Bank of Cleveland and w have been injured in our reputation and standing as a bank ins tution.

Under the old method, we could with reasonable certainty, dete mine the average daily amount of cash that would be required to pa checks over our counter. We could not, with any certainty, dete mine the average amount of cash required for payment of chec over our counter, after the inauguration of the methods I have her inbefore described. The effect of placing the name of my bank o the par list of the Reserve Bank of Cleveland, it was a notice t every Federal Reserve Bank, that every check drawn on my ban would be collected by the Federal Reserve Bank of Cleveland, free cost and for that reason practically all of my out of town checks we sent by the various Federal Reserve Banks throughout the Unite States to the Cincinnati branch of the Federal Reserve Bank Cleveland and collected together and forwarded to Catlettsburg an presented at my counter.

Kentucky was colored as a universal par clearance state.
This was not true as to the Farmers & Merchants Bank (Tr., 368).

H. Flood Madison, Bastrop, Louisiana. My connection with the Bastrop State Bank began in June, 1900, at which time I was elected President; and I have held that position ever since. The Bastrop State Bank was organized in 1890 or 1891. The Federal Reserve Bank of Dallas, Texas, has used every conceivable effort to obtain the consent of the Bastrop State Bank to remit cash items at par; and not only that it has adopted every conceivable means to force the accomplishment of that result. The Bastrop State Bank could not see its way clear to sign the par clearance agreement; and, the negotiations to do so having failed, the Federal Reserve Bank of Dallas undertook by various methods to coerce it to sign the agreement; sent Special Agents here to interview the customers of the Bastrop State Bank; and threatened to locate a Special Agent here to collect all cash items which it received on that Bank in cash across its counter; and on at least two occasions held such cash items until they amounted in the aggregate to more than double the cash reserve which the Bastrop State Bank under the laws of Louisiana was required to have on hand in its safe or vault and then presented these items across the counter of the Bank for payment in cash; and on one occasion at least the Federal Reserve Bank of Dallas sent circular letters to a great many of the customers of the Bastrop State Bank; and finally the Federal Reserve Bank of Dallas sent all of its cash items on the Bastrop State Bonk for collection, only in cash, through the American Railway Express Co.; and it is today endeavoring to collect its items in the same manner in utter disregard of the laws of this State on the subject.

The "Instructions to Agents" in the collection letter in which such cash items are sent through the American Railway Express Company appeal to me as being very harsh in their terms—in any event they are self-explanatory; and I attach one of such original collection letters as a part of my answer to this question—marked Exhibit 1 for identification; and for a convenience of reference I take the liberty of quoting the first three paragraphs of the "Instructions to Agents" on the reverse side of this letter:

"(1) Payment of this collection must be obtained in cash and remitted in cash. If received within banking hours, present immediately for payment all items to bank on which drawn and make remittance therefor on same date. If received after banking hours, or on holidays, items must be presented to bank on which drawn and remittance must be made the next succeeding business day.

"(2) Do not hold, under any circumstances, for convenience of paying bank.

"(3) Items are payable in cash over the counter of the bank on which drawn and, under no circumstances, must the collecting agent accept bank's draft for the items in settlement. You are instructed to accept only lawful money for the United States or national bank notes, currency or coin in payment of items presented."

The name of the Bastrop State Bank was placed on the par li of the Federal Reserve Bank of Dallas, Texas; and this was do not only without the consent but over the serious protest of th Bastrop State Bank.

There was a very marked difference in the number of checks pr sented through the Federal Reserve Bank of Dallas prior to the tim it placed the Bastrop State Bank on its par list and subsequent t that time. In fact the checks presented by the Federal Reserve Ban prior to that time were altogether negligible both in number an amount; but subsequent to that time the checks presented throug the Federal Reserve Bank represented a very large per cent of th checks drawn on the Bastrop State Bank.

The whole point is that if the Federal Reserve Bank did not carr the Bastrop State Bank on its par list the former Bank would recei practically no checks, cash items, on the latter Bank—the quantit would be altogether too negligible for controversy or serious consi eration; a fact which was clearly demonstrated by the course of th business between the two banks prior to the time that the Feder Reserve Bank placed the Bastrop State Bank on its par list.

The method of collecting checks by the Federal Reserve Bank an its agents drawn on the Bastrop State Bank did in at least two in stances involve an accumulation of checks; and while I am unable t state the exact period of time they were accumulated, I know that i was several days.

The aggregate amount of checks thus accumulated in the two in stances above mentioned when presented for payment in cash acr the counter of the Bastrop State Bank was more than double th amount of the cash reserve which that Bank was required to carr in its safe or vault under the laws of the State of Louisiana.

There has been no change in the method of collecting cash item on my bank, since the decision of the Supreme Court in the abo stated case.

Based both on experience and observation, I state without hesit tion, and without any fear whatever of successful contradiction, th the Federal Reserve Bank of Dallas, Texas, has not hesitated to u "Big Stick" methods in its efforts to force the country banks int its par clearance system; and today it is following up those method in utter disregard of the laws passed by the Legislature of this Sta for the protection of the State banks.

Again, the Federal Reserve Bank seemed not to hesitate at an expense to accomplish its purpose—even though it claims a gre saving for its par clearance system: Today that bank is willing t pay the American Railway Express Company $4.33 per $1,000 fo transporting money from Bastrop, Louisiana, to Dallas, Texa whereas the Bastrop State Bank offers to render that same servic by remitting the money in New York, St. Louis or New Orlean exchange for $1.00 per $1,000.00.

Then, too, the Federal Reserve Bank seems not to hesitate to spen any amount of money in spreading its propaganda in support of it par clearance system; but, on the other hand, the country banks ar unable to do this—they have not the great facilities of the Gover

ment and its unlimited resources to back them up in presenting their side of the question to the public.

The result has been to estrange the two banking systems of the country—to create a strong antagonism between them; Whereas they should go hand in hand in financing and upbuilding the whole country just as they did during the World War.

But as soon as the War was over the Federal Reserve Bank of Dallas inaugurated a war of its own—a par clearance war—on the country banks; and has waged that war continuously and relentlessly ever since. Thus the spirit of co-operation is gone (Tr., 374).

R. B. Clark, Tupelo, Mississippi. Active Vice President. The Bank of Tupelo (Tr., 395, *et seq.*).

On or about January 25th, 1920, witness noticed article appearing in the New Orleans Item relative to the campaign of the Federal Reserve Bank of the Sixth Federal Reserve District to enforce par clearance in that District.

The following is a true copy except that where the name M. B. Wellhorn appears in the second line of the second paragraph it should be M. B. Wellborn instead, and except that where the name Mr. Wellhorn appears in the fourth line of the third paragraph it should be "Mr. Wellborn":

"Reserve bank starts drive to collect checks at par—Many Southern banks violating Federal act by charging for collections, official says—Observance will mean great saving for Dixie.

"A national campaign has been launched by the Federal Reserve Board to compel observance of the provision of the Federal Reserve act, relative to the collection of checks at par.

"The campaign has been actively launched in New Orleans by Marcus Walker, manager of the local Federal Reserve Bank, and M. B. Wellborn, governor of the Federal Reserve Bank of Atlanta, Ga., of which the New Orleans bank is a branch.

"The campaign is to be directed particularly against recalcitrant banks in the Atlanta district, as it is here that more than 29.6 per cent of the banks violating the Federal act are found. The practice of charging for the collection of checks, it is said in a recent statement by Mr. Wellborn, is 'a burden and an unnecessary toll on commerce.'

"'The universal application of the practice of collecting checks at par will mean a tremendous saving to commercial and business organizations all over the United States, and particularly in this section, as the greatest number of banks refusing to institute the practice are in the South,' said Mr. Walker, Thursday.

"The officers of the Federal Reserve System have been successful in securing the co-operation of a great majority of the banks of the country, but a large number have steadfastly refused to accede to the request of the Government, and now an active campaign of solicitation is to be carried on. He explained, that all member banks are compelled to comply with the provisions, but that non-member State banks were only directed to do so.

"If a merchant in New Orleans receives a check from his custom in the country or anywhere outside of the city, drawn on a non-me ber bank, and the New Orleans merchant deposits this with a me ber bank here, he is charged for collection of this check if the no member bank refuses to comply with the Federal provision a charges the city bank for the payment of the order," said M Walker. "While the charge on a single check may not be lar the aggregate number of checks handled during the year by a bank records a large total, which, of course, must inevitably be pa by the merchants and business houses. This actual expense must added to the additional cost of bookkeeping and clerical work co sequent upon the practice of some of the banks following one pra tice and some the other."

" 'What we are going to do,' said Mr. Walker, 'when a non-me ber bank refuse to pay the check at par is to collect the check at t counter, even if a special messenger must be sent to the bank. Th will have the effect of compelling the recalcitrant bank to acce to the par-collection provision, as it will draw considerably on the cash reserve.'

"According to Mr. Walker, of the 30,260 banks in the Uni States 26,315 are on the Federal Reserve par list. Of the 3,945 r maining banks which are not in the par list 1,168 are in the Atla district. Only 2,777 banks in the other 10 reserve districts are n on the par list and do not comply with the par collection of che of the Federal act."

The following documents were returned with and made a part said interrogatories, and tendered in evidence by plaintiffs and o jected to by defendants on the same ground taken as to the int rogatories, and said objection was sustained by the court and s evidence rejected.

The New Orleans Item.

NEW ORLEANS, *January* 28, 1920

Mr. R. B. CLARK,
Vice-Pres. the Bank of Tupelo,
Tupelo, Miss.

DEAR SIR:

The information contained in the article headed "Reserve Ba Starts Drive to Collect Checks at Par," came from Mr. Mar Walker, Manager of the New Orleans branch of the Federal R serve Bank. The writer usually handles such information for t paper. * * *

Memphis Branch
Federal Reserve Bank of St. Louis,
Memphis, Tennessee.

MAY 27, 1919.

Mr. R. B. CLARK,
Cashier Bank of Tupelo,
Tupelo, Mississippi.

DEAR SIR:

May we invite your further consideration to the proposition set forth in former letters to you, requesting that you remit to us at par for such checks on yourselves as we may receive.

You are, probably, aware of the fact that the Federal Reserve Banks are engaged in a campaign looking to the extension of the Federal Reserve Par List. * * *

Federal Reserve Bank of St. Louis,
Memphis, Tenn.

DECEMBER 20, 1919.

BANK OF TUPELO,
Tupelo, Mississippi.

GENTLEMEN:

For your information, and to advise you of the very decided progress that is being made *in the campaign being conducted by the Federal Reserve Banks* to have all banks agree to remit at par. * * *

Federal Reserve Bank of St. Louis,
Memphis, Tennessee.

MARCH 24, 1920.

BANK OF NETTLETON,
Nettleton, Miss.

GENTLEMEN:

We are forwarding you today cash letter composed of checks on yourselves. Although we have received no agreement from you to par items, we thought it best to explain to you that your name appears on the Federal Reserve Par list, which is now in our hands.

The names of quite a few Mississippi banks were sent to Washington several weeks ago to enable the Federal Reserve Board to have sufficient time for preparing the printed booklet known as the "March Supplement."

We, of course will be receiving checks on your bank, and you are no doubt aware that Section 13 of the Federal Reserve Act provides that no exchange charge shall be made against a Federal Reserve Bank, and we kindly ask that if these checks cannot be remitted to

us for their face value, that you certify same and return to us a
we shall accept your decision as definite for the present.

Yours respectfully,

A. J. WILLIAMS,
Cashier.

The Bank of Tupelo,

Tupelo, Miss.

APRIL 9*th*, 192

J. T. FARGASON COMPANY,
Tupelo, Miss.

GENTLEMEN: * * *

To sum up the situation:

First. No bank in the state of Mississippi has ever attempted
do one thing to injure in any way the Federal Reserve Banks;
the other hand the Federal Reserve Bank has attempted by
most offensive means possible, without any warrant of law, to
force their ideas upon the state banks, and the law passed by
legislature of the state of Mississippi was purely a measure of
fense which incidentally gave the St. Louis banks, and all of
such banks, protection against those banks in the state of Missis
which had been charging a rate higher than $1.00 per thousand.

Second. There is absolutely nothing in the Federal Reserve
that can be interpreted as requiring the St. Louis banks to de
such checks with the Federal Reserve Banks and they are not de
so when such checks are not collectible at par, therefore, the
Louis concerns can deposit these checks with their St. Louis ba
and the St. Louis banks will, just as they have always done, s
these checks direct to the Mississippi banks and the Mississippi ba
will just as they have always done, deduct $1.00 per thousand
remit them in acceptable exchange.

Third. Even were such not the case, as stated, the Missis
banks will give direct service to those St. Louis concerns at the s
rate and in the same manner that they would give such servic
the St. Louis bank, therefore, they cannot sustain the statement
it would cost them more at the present time than it has formerl
Much more could be said but certainly this ought to be sufficient.

The only change from the condition that has existed for ma
many years is the agitation initiated by the Federal Reserve Ba
and those St. Louis concerns, and their position is not even sustain
by the Federal Reserve Act, but only by a very arbitrary interp
tation and ruling of the Federal Reserve Board, which, as you kn
has absolutely no authority or jurisdiction over non-member st
banks.

Yours very truly,

R. B. CLARK,
Vice-Pres.

(Tr., 415.)

Craig, William S., Tallulah, Louisiana, Cashier of Tallulah State Bank for nineteen years, or since September, 1902. Federal Reserve Bank of Dallas is the name of the Federal Reserve Bank in the district where witness' bank is located. A representative of the Federal Reserve Bank of Dallas called upon witness and requested him as representative of the Tallulah State Bank to agree to remit at par to the Federal Reserve Bank of Dallas for all checks on said Tallulah State Bank presented through said Federal Reserve Bank. He said if witness did not agree to remit at par that they would take steps to have the checks presented through some other channel and demand cash over the counter. He stated that checks might sometimes be presented at one time for an amount in excess of the cash in witness' vault, in which case if the checks were not paid they would be protested for non payment. Witness offered to remit at the same price that would be charged by the Express Company or the Postoffice for transmitting remittances of equal amount and the offer was declined. This representative stated that he knew the banks could not hold out for any great length of time in paying their checks in cash over the counter as it would be a losing proposition to them and they would in time be forced to join the par clearance system, therefore the Federal Reserve Bank would not consider such an offer.

This created the impression upon witness that the Federal Reserve Bank was willing to proceed to any extremities to force their par clearance scheme, and were perfectly willing to force out of existence any banks that did not agree to their demand.

The representative stated that the Federal Reserve was making very large earnings and that the Federal Reserve Bank was prepared to use any part or all of this large earning to force the country bank into their par clearance system therefore it was useless for the country bank to oppose joining the system. These threats forced witness as representative of the Tallulah State Bank to join the par clearance system, reserving the right to withdraw at any time by giving notice. Witness signed because he was forced to do so through fear of injury to his bank (Tr., 424).

C. D. Waggoner, Norwood, Colorado, Banker.

I was connected with the Norwood State Bank in November, 1919. Norwood is about 500 Miles from Denver, Colorado. Norwood is about 18 miles from the nearest railroad station. I had an interview with a representative of the Federal Reserve Bank relative to par clearance. I was requested to sign a card agreeing to remit at par but after a considerable discussion I declined to sign this card. He said that I was not being fair to our stockholders in taking the attitude that the Federal Reserve Bank would ultimately force us to their terms. I asked him how they would do this and he said that in one instance they had collected enough checks against a bank until they knew they would not have cash enough to pay the checks and they presented them at the window and refused to accept anything but cash and when this was not forthcoming they protested the checks and closed the bank's door. He said that this

would happen to us if I did not agree to their terms. I told h that he would remit at par we have never since made them a charge for exchange because our bank was not large enough to en into a fight with the Federal Reserve System (Tr., 427).

Deary, W. A. (Bloomington, Nebraska): Connected with Far ers' State Bank, of Bloomington, Nebraska, in January, 1920, d ing which month one M. L. Bishop, representing the Omaha Bra of the Federal Reserve Bank of Kansas City, visited the Bloomi ton bank, and requested its officers to sign a par clearance agr ment. Bishop said that, unless this agreement was made, the Fe eral Reserve Bank would have checks on this bank presented at window and cash demanded, and would refuse to accept drafts payment. * * * That the Federal Reserve banks were going force par clearance, no matter what it cost to do so; and would car out the policy of collecting cash over the counter by special rep sentatives, regardless of what it cost to do so (Tr., 430).

John B. Helpman, Cashier Miners and Smelters Bank, Northpo Washington.

I have been connected with the bank at Northport, Washing for six years, the first of next January. In the matter of paym of checks for account of the Federal Reserve Bank at San Francis they sent their checks through the Express Company and the E press Company demanded cash at the window (Tr., 432).

O. J. Irwin, Loretto, Nebraska, Cashier of Loretto State Ban Witness was connected with this bank during December, 1919, d ing which time the Federal Reserve Bank of Omaha, Nebraska, se some checks or cash items on the Loretto State Bank through t American Express Company; when these checks were presented t agent of the company demanded cash in payment therefor. La in December a party of three claiming to represent the Federal R serve Bank of Omaha, presented an agreement for the Loretto St Bank, to sign, agreeing to handle all checks from the Federal Re serve Bank at par. At that time they informed us that they we in position to make it very unpleasant for us if we did not sign th agreement. The Party consisted of a driver of an automobile wh remained in the car and three who came into the bank. Two the parties who came into the bank claimed to represent the Fe eral Reserve Bank, the third party being an attorney and Notar Public from Albion, Nebraska. Upon our failure to sign said car they informed us they were in position to enforce their demand We did not sign the card presented at that time and they presente some checks for payment and demanded payment thereof in cas The amount of said checks in the aggregate was $11,197.69. T dates of said checks indicated that they had been held before pres tation for about seven days. We offered to pay said checks wi a draft on an Omaha bank where we kept our reserve fund but the refused to accept it and they informed us that if not paid in cu rency they would protest every check immediately. They brou

Notary Public with them for the purpose of protesting said checks and they informed us that if we continuously refused to sign said agreement they were in position to say that we could not borrow a "damn dollar" at any national bank. After all these threats were made, we signed the agreement to prevent the checks of ours being protested and avoid the necessity of keeping a larger amount of cash on hand, than had been our custom when checks were presented through the mail. One of the many reasons why we were induced to sign said par clearance agreement was in order to save the expense of protest fees on a large number of checks presented. About 243 checks were at that time presented for payment in currency for which the protest fees would have amounted to about $600.00. After we signed the par agreement they accepted our drafts on the Omaha Bank in payment of the checks. Our signature to the par agreement was not voluntary but they had us in a position we could not refuse without embarrassing the bank (Tr., 433).

W. H. Kuenzi, Clyman, Wis. Cashier of Farmers State Bank of Clyman, Wisconsin.

Early in 1920 we received letters from the Federal Reserve Bank of Chicago relative to the so called par clearance; in none of our answers did we agree to remit at par, and we continued making our regular exchange charges on the cash items sent by them to us for collection. Shortly after the local express agent presented checks drawn on us over the counter and demanded cash in payment. On May 21st, 1921, shortly after our opening hour in the morning an agent of the Federal Reserve Bank of Chicago called and presented checks drawn on us amounting to over six thousand dollars. Inasmuch as this was about twice the amount of cash usually carried, we were unable to pay them. The agent however offered to take a draft in payment providing that thereafter we would arrange with our correspondent to remit at par in Chicago exchange for all items cleared through the Federal Reserve Bank. He also related how checks were collected other than through the express agent appointed. As we could not afford to have our customers' checks presented that morning dishonored, we had to follow the course as outlined by him, and since then our correspondent remits for items drawn on us forwarded from the Federal Reserve Bank (Tr., 435).

Nower, N. L. (Winsboro, La.): Witness is cashier of the Franklin State Bank and Trust Company since April 16, 1917. About two years ago, the first representative of the Federal Reserve Bank at Dallas approached the witness on the subject of par clearance, and about a year ago the last one of these representatives approached witness on that subject. Witness did not sign the par clearance agreement. These representatives threatened to have the checks protested, and that would cause dissatisfaction among the customers of witness' bank; which would finally cause it to change its point of view. Witness still refused to sign, but he afterwards parred their mail collections until the State of Louisiana passed an Act giving them the right to charge exchange. After witness' bank ceased to

par their mail items, these items from the Federal Reserve Bank were presented for payment through the express company. Witness does not know how long they were allowed to accumulate, but frequently there were two or three collection letters presented at one time, bearing different dates, and sometimes as many as four. These checks were never presented at the bank more than twice a week, and sometimes only once a week. This remittance at par was forced upon witness' bank. It certainly was not voluntary. The amount of revenue derived from exchange on cash items amounts to a substantial sum for the country bank and witness' bank would suffer a loss of these revenues if it is compelled to conform to the demand of the Federal Reserve Bank and remit at par. The refusal of the bank to pay checks when presented and exchange charges refused was the result of the course of conduct of witness' bank in the progress of the warfare between the Federal Reserve Bank and the witness' bank on the subject of par remittance. It certainly tends to injure the reputation and credit of a bank to have checks drawn upon it against valid credits of the drawers returned as dishonored and unpaid. Witness arrives at this conclusion because he had so many complaints from this source, and, in some instances, lost accounts. Such a course is injurious to the credit and business of the bank and bankers and business men generally know it. Witness feels sure the Federal Reserve Bank knows it, and, realizing this result, the Federal Reserve Bank employs it as one of the means used in the effort to compel witness' bank to agree to remit at par. As a matter of fact, a small country bank cannot continue to conduct its business successfully and profitably and be at all times prepared to pay all checks drawn by all or a large percentage of its depositors in currency over its counters, and thus be deprived of the customary revenues charged for the service of transmitting the proceeds of such checks to other places (Tr., 439).

A. L. Norton, Allen, Michigan, President, Allen State Savings Bank, has been connected with this bank ten years on the First of August, 1921, as director, and has been president since January 1, 1914. This bank was placed upon the par list of the Federal Reserve Bank of Chicago by agreement but the bank does not expect to continue to operate under said agreement. It never agreed willingly to do so and we felt that we could no longer submit to it. We advised the Federal Reserve Bank on August 18, 1921, that on and after September 1, 1921, we would make regular exchange charges believing that under the recent Supreme Court decision they would be obliged to remove us from their par list and allow us exchange. They refused to assent to this arrangement and renewed their threats to pursue the same methods of collections which had been threatened and employed before we signed our par clearance agreement. They wrote witness a letter on that subject, as follows:

Receipt is acknowledged of your letter, dated August 18th, calling our attention to the decision of the Supreme Court of the United States regarding the collection of checks of non-member banks, and informing us that after September 1, 1921, you will resume the

practice of charging exchange at the rate of 1/10 of 1 per cent on all checks sent to your bank for collection and remission.

The Supreme Court's decision was rendered in a suit brought by a group of non-member banks to enjoin the Federal Reserve Bank from collecting checks drawn on the country banks by having agents demand payment in cash in cases where the country banks declined to remit at par, the complaint alleging that the Federal Reserve Bank undertook the collection of such checks by presentation and demand of payment in cash with the intent of injuring the banks on which the checks were drawn. As the issue before the Supreme Court was merely whether, as a matter of pleading, the plaintiff's bill of complaint stated a cause of action, the decision of the Supreme Court is not a final determination of the litigation and the case will now be sent back to the District Court of the United States for the Northern District of Georgia for trial upon the merits.

The opinion of the Supreme Court does not deny the legal authority of the Federal Reserve Bank to collect checks on non-member banks by making presentation thereof at the counter, but holds merely that non-member banks may be entitled to relief if they can prove that the Federal Reserve Bank malevolently intends to accumulate checks and present them in an oppressive manner for the sole purpose of injuring the banks upon which the checks are drawn.

In the opinion of the Counsel for the Federal Reserve Board, the Supreme Court's decision does not interfere with the present check clearing functions of the Federal Reserve Banks and those banks may continue, as heretofore, to collect checks drawn upon banks which are listed upon the par list.

Federal Reserve Banks are prohibited from paying exchange or collection charges to a bank for collection and remission of checks and as all banks in our district are included in the Federal Reserve par list, we must continue to collect checks drawn on your bank at par.

We prefer to continue to send your checks directed to you for remittance at par in Chicago or Detroit exchange, or, we will accept in payment shipments of currency at our expense. If it is not convenient for you to remit in Chicago or Detroit exchange, we shall be pleased to send your checks to your Michigan correspondent if you will arrange to have it remit to us on receipt at par in Chicago or Detroit exchange. Unpaid items would be subject to return within a reasonable time.

We hope you will reconsider your decision because if you will not remit at par for the checks we are sending to you, or arrange to have them collected through one of your Michigan correspondents at par, we will be obliged to make other arrangements to collect payment in full.

Kindly let us hear from you further, using the enclosed stamped envelope for your reply.

Yours truly,

(Signed) WM. C. BACHMAN,
Controller of Collections.

As between having to pay all or a large proportion of chec drawn on deposits in this bank in currency over the counter a remitting for the same without any charge of exchange, it would the lesser of two evils as a permanent arrangement to remit with exchange charges, and would be better for the bank to forego e change charges than subject itself to a permanent method of payi practically all checks drawn upon it in currency over the coun As between the two courses we should probably have to surren to the par clearance campaign (Tr., 436).

L. C. Nunn, Columbia, Cashier of the Citizens Progressive Ba of Columbia, Louisiana.

I have been connected with the Citizens Progressive Bank Columbia; I have been visited by three representatives of the Fede Reserve Bank with reference to agreeing to make remittances thro the mails at par.

Three different representatives of the Federal Reserve Bank Dallas, Texas, came to me on three different occasions. On the fi occasion the representative of the Federal Reserve Bank tried to the Citizens Progressive Bank, of which I am cashier, to sign up agreement to par with the Federal Reserve Bank of Dallas, Te This I refused to do. On the second occasion the representative the same bank came back to see me and again tried to get me sign up an agreement to par. When I refused he presented accumulation of eight or ten days' checks which checks totaled to $8,000.00 and demanded the cash. At that time I signed a si day agreement with this representative, but it was only after representative had demanded the cash for the checks he held an was practically forced to sign this agreement or close the doors the bank. On the third occasion the representative of the s bank called to see me concerning the same matter. I had cance our sixty day agreement to par before this last visit and after Legislature of Louisiana had passed an act prohibiting the Fede Reserve Banks from forcing state banks to par. At that tim signed a thirty day agreement to par after being forced to do so.

The first representative proposed to send the checks here by press and have them collected through the express office.

The second representative presented about $8,000.00 worth checks and refused to accept exchange for them and demanded cash, unless I would sign the par agreement with him.

The third representative threatened to write our customers t our bank would not pay their check dollar for dollar and that were asking for a discount on their checks.

A representative came to see me on three different occasions, I do not remember the name of either of them.

This third representative also stated that he was here to appo a collecting agency in the event that we did not sign another ag ment to par.

The last representative did not bring any checks, but the se representative brought about $8,000.00 worth of checks with a

eight different letters indicating that these checks had been piling up and held for about eight days, at least.

I finally signed the agreement to remit at par, because of the threats that had been made by these representatives which we knew, if carried out, would injure our business and cause our customers to become dissatisfied and for the further reason that we would have to keep on hand a large amount of cash to pay the checks that would be presented by the Federal Reserve Agents.

The methods threatened to be used against me would have injured my business, because if the majority of our customers, who are country people, had received such letters as the Federal Reserve representative threatened to write, they would not have understood why they lost customers and depositors. And for the further reason that if a collection agency had been appointed as threatened it might have caused our customers to lose confidence in our bank, as they would not have understood the situation and reasons therefor.

These agents declined to accept payment of checks presented by them in the form of bank drafts drawn on my correspondents before I signed the par agreement.

The last representative did not bring any checks with him. The second representative brought the checks and after I signed the agreement to par he accepted exchange for the checks (Tr., 442).

A. J. Mastalir, Pierce, Nebraska, assistant cashier of the Cones State Bank. I was connected with the Cones State Bank during November, 1919.

Two years ago on or about the 14th day of November, 1919, Mr. W. S. Lower and whom I afterwards found out to be Mr. M. L. Bishop, and a woman and a man drove up side of the bank, Mr. Lower and Mr. Bishop came into the bank and Mr. Lower said "We have a few checks here we would like to have you cash" and presented several checks one at a time and I paid them one at a time, and when I thought I was all through paying checks Mr. Lower then stated with a smile that he had one more check that he would like to have me pay, and presented a check for $30,100.96. I said to them this was more than we were required to have in our vault by law and all they did was to smile. I went back to the draft register and wrote a draft for this check and offered it in payment to Mr. Lower and he refused to accept it, stating that they had to have legal tender. I said to them "There is your draft and I have the check" upon which this gentleman that I found out afterwards to be Mr. Bishop reached down into a grip and pulled out a revolver and passed to back of Mr. Lower who put it into his hip pocket and I thought that I was going to be held up and Mr. Bishop replied "do you want to take that stand," upon which Mr. Lower stepped out of the bank over to the car and called in a stranger to me. I then went back into what we call the back room and consulted with Mr. F. W. Steinkraus, the cashier. While we were in the back room conferring, Mr. Lower and Mr. Bishop came back into the room where we were. We were pretty much embarrassed over not having enough money to meet this check, and when they came in they noted

our embarrassment and one of them said "Why don't you sign a par card, avoid this embarrassment and keep your money" (Tr., 44

Deibler, D. C., cashier of the Pierce State Bank, Pierce, Neb. Witness was connected with the Pierce State Bank during November 1919. Witness paid a number of checks in silver and currency on many different occasions to Mr. Lower who presented the checks, and on two different occasions Mr. Bishop was with Mr. Lower when presentation was made, one of these being November 7, 1919, on which date a gun display was made in our bank by these men according to witness' best recollection, said checks amounted in the aggregate to somewhere around $10,000, but witness doesn't remember the exact amount of this one day. Witness paid these checks in silver and currency to meet the demands of these men and payment was made on each check separately. It took witness about two hours to pay them. The payment of these checks by witness to Messrs. Lower and Bishop was witnessed by N. Benditzon, a local merchant, who was one of the bank's very best customers, that is one of the heaviest depositors. Mr. Benditzon entered the front door to make a deposit in witness' bank while Messrs. Lower and Bishop were collecting these checks at the window in silver and currency. Immediately upon the sight of these large stacks of silver and currency being taken from the bank and put into their grips, and the gun display by these men, Mr. Benditzon almost became panic stricken. He immediately demanded an explanation of all this excitement from witness and after he had done the best he could to explain the situation the former went direct to the president, Mr. Frank Pilger for a confirmation of witness' explanation. After some time, the two of them quieted him down and assured him that it was not necessary for him to become alarmed about his deposit in witness' bank and that it would not be necessary for him to make any withdrawals on this account (Tr., 456).

Pondron, J. A. (Dallas, Texas): Was a Director of the Houston Branch of the Federal Reserve Bank of Dallas, Texas, from date of its organization until October 17, 1919. Resigned as such Director on last-mentioned date; letter of resignation attached as it appears in transcript page 27. Reasons for resignation are fully stated in said letter. His information was that the Federal Reserve Board was responsible for the general plan and scheme of enforcing par clearance. As a Director of the Branch Federal Reserve Bank, at Houston, he had no discretion in such matters; was not officially informed of the action of the Houston Branch in connection with the campaign for par clearance. Was not informed of the plans looking to the enforcement of par clearance, which were incorporated without consulting him as Director. If non member banks declined the invitation to clear items at par, such items on such banks were accumulated and presented by a messenger from the Federal Reserve Bank, who demanded cash at the drawee bank's counter in payment of such items. Witness did not approve of this plan of campaign; but had no opportunity to voice his objections, and was

informed that the orders came from the Federal Reserve Board (Tr., 461).

A. K. Smith, Brainard, Nebraska, Cashier of the Bank of Brainard, Brainard, Nebraska, where I was engaged in business during November, 1919, a representative of the Omaha Branch of the Federal Reserve Bank of Kansas City called upon me. He desired my bank to agree to remit to the Federal Reserve Bank at par for all checks drawn on my bank and he said they would collect them in cash if we did not agree to remit to the Federal Reserve Bank at par for all checks drawn on the Bank of Brainard. He said that in the absence of said agreement checks on banks refusing to sign the par list would be held by the Omaha Branch of the Federal Reserve Bank until a large amount had been accumulated and then the checks would be presented by special messenger and payment thereof demanded in currency or same as had been done at Pierce, Nebraska. He knew we wouldn't have sufficient currency to pay these checks and felt that we must sign the par agreement. We did not sign the agreement willingly, but through fear of the consequences involved in demanding cash for the checks on our bank in accordance with what he told us. But for these threats of coercive measures with respect to the payment of said checks we would not have agreed to remit to the Federal Reserve Bank at Omaha, Nebraska, for checks on us without charge on us for said service (Tr., 462).

William Dangerfield Smith, Benton, Louisiana, Banker.

I have been connected with the Bank of Benton, Louisiana, since June 6, 1910, as Cashier. Mr. Floyd Ikard called upon me, first, sometime in the Fall of 1919. I think about September. He stated that he was representing the Federal Reserve Bank and called on us for the purpose of getting us to sign a contract to par all items sent to us on us from them. Mr. Clouse called on me next, some time in the Winter of 1920. He came for the purpose of getting us to sign a contract to par all items sent to us on us from the Federal Reserve Bank. Mr. Clouse stayed with me from the time I opened my Bank in the morning, about 9 A. M. almost to closing time about 4 P. M. The occasion of his coming was because I had cancelled a previous contract to remit at par for the Federal Reserve Bank at Dallas. I cancelled the agreement because I had been practically forced to sign the contract by Mr. Ikard, being a large loss to us. Mr. Clouse said: "Mr. Smith, we have been accused of having a 'big stick.' You know it is necessary in order to enforce the law, that you have a big stick. We did not write the law, but we are going to enforce it. You no doubt realize that we have resource of the government behind us, in fact, we are part of the government" (Tr., 462).

E. O. Terry, a Banker, Newton, Texas.

Sometime prior to February 4, 1920, I had quite a long conversation with Mr. Lawrence E. Dignan, a representative of the Federal Reserve Bank of Houston, which was a branch of the Federal Re-

serve Bank of Dallas, Texas, regarding the payment of a very lar bunch of checks presented to our branch Bank at Burkeville, Tex I stated to him that I did not consider just or right that he shou accumulate these checks in such quantities as it appeared he ha done in this instance, and present them for payment, demandi cash. I had a telephone conversation with the representative of t Federal Reserve Bank while he was at the Branch Bank of Burk ville, Texas, and I in the Newton County State Bank at Newt Texas, and I explained to him that his batch of checks exceeded o cash balance at that bank, and that I would appreciate very much he would let us issue to him Houston or Dallas Exchange in lieu actual cash. He agreed to take the exchange, provided that we wo sign a par agreement with the Federal Reserve Bank, otherwis demanded cash.

Mr. Dignan demanded currency in the payment of said chec We offered him exchange free of charge, and further offered h Exchange on the Newton County State Bank at Newton, Texas, a agreed to pay him cash for said exchange when he reached this po by private conveyance. He refused to accept my Exchange offe in lieu of currency. Mr. Dignan stated that his instructions fr the Federal Reserve Bank was such that he had to collect the che in cash, unless the par agreement was signed.

Mr. Dignan explained to me that the Federal Reserve Bank h an unlimited expense account, and that he could make trips Burkeville, Texas, as often as was necessary, regardless of the co and that he would continue these trips, in this manner, or bri other pressure to bear, until we signed the agreement. Mr. Digna said that other pressure would be brought to bear on our bank force it to sign the par clearance agreement (Tr., 4635).

R. S. Wilfley, Steele City, Nebraska, business of banking.

I was engaged as Cashier of the Farmers State Bank, Steele Cit Nebraska, on or about the 15th day of December, 1919, and am s so engaged On or about December 15th, 1919, one Mr. Bish called at my bank and presented me with his card also stating th he was representing the Federal Reserve Bank of Kansas Cit Missouri, and interviewed me. I believe it was M. L. Bishop a the purpose of his interview was to get me to sign a card consenti for my bank to par all checks sent to me by the Federal Reser Bank.

He said that the Federal Reserve was powerful enough to "pu across" and that they were even organizing opposition banks wh a bank refused. He said that the profits of the Federal Reser Bank were great enough that the country banks could not afford refuse. He advised me very strongly to sign the card stating th he had been a banker at some town in Kansas and he understo it and if he were me he would sign. He told me it would be usel to fight by letting them send the checks by express and I told hi that I thought it very unfair in method and very high handed. H replied by saying it was for the good of the cause. I asked him tell me frankly what would happen to my bank if I refused and

then told me of the intention to collect by express company and how they were causing train schedules to be changed and opposition bank organized.

The statements of said Bishop certainly did cause me to sign the card. I called my father on the telephone and told him what had been said to me by said Bishop and he was of the same opinion as I was as to the matter. He stated that he thought it a rather arbitrary manner of forcing things but perhaps I had better sign it. My father is a banker of 44 years' experience (Tr., 469).

Section 13, Federal Reserve Act.

Original Enactment (38 Stats., 263).

SEC. 13. "Any Federal Reserve bank may receive from any of its member banks, and from the United States, deposits of current funds in lawful money, national-bank notes, Federal Reserve notes, or checks and drafts upon solvent member banks, payable upon presentation; or, solely for exchange purposes, may receive from other Federal Reserve banks deposits of current funds in lawful money, national bank notes, or checks and drafts upon solvent member or other Federal Reserve banks, payable upon presentation."

Re-enactment of September 7, 1916 (39 Stats., 752).

"Any Federal Reserve bank may receive from any of its member banks, and from the United States, deposits of current funds in lawful money, national-bank notes, Federal Reserve notes, or checks, and drafts, payable upon presentation, and also, for collection, maturing bills; or solely for purposes of exchange or of collection, may receive from other Federal Reserve banks deposits of current funds in lawful money, national-bank notes, or checks upon other Federal Reserve banks, and checks and drafts, payable upon presentation within its district, and maturing bills payable within its district."

Composite Copy of Section 13 of the Federal Reserve Act Showing Changes Made by the Re-enactments of September 7, 1916, and June 21, 1917.

NOTE.—All caps show original act.

Italics show additions made by re-enactment of Sept. 7, 1916.

Brackets show words omitted from original act when subsequently re-enacted.

Roman type shows additions made by re-enactment of June 21, 1917.

SECTION 13.

ANY FEDERAL RESERVE BANK MAY RECEIVE FROM ANY OF ITS MEMBER BANKS, AND FROM THE UNITED STATES, DEPOSITS OF CURRENT FUNDS IN LAWFUL MONEY, NATIONAL-BANK NOTES, FEDERAL RESERVE NOTES, OR CHECKS AND DRAFTS

[UPON SOLVENT MEMBER BANKS] (omitted in amendments)

PAYABLE UPON PRESENTATION; *and also for collection maturing bills;* OR SOLELY FOR

[EXCHANGE] (transposed in amendments)

PURPOSES *of exchange or of collection*, MAY RECEIVE FROM OTHER FEDERAL RESERVE BANKS DEPOSITS OF CURRENT FUNDS IN LAWFUL MONEY, NATIONAL BANK NOTES, OR CHECKS *upon other Federal Reserve banks* AND *checks and* DRAFTS

[UPON SOLVENT MEMBER OR OTHER FEDERAL RESERVE BANKS] (omitted in amendments)

PAYABLE UPON PRESENTATION *within its district, and maturing bills payable within its district;* or, solely for the purpose of exchange or of collection, may receive from any non-member bank or trust company deposits of current funds in lawful money, national-bank notes, Federal Reserve notes, checks and drafts payable upon presentation, or maturing notes and bills: Provided, Such non-member bank or trust company maintains with the Federal Reserve bank of its district a balance sufficient to offset the items in transit held for its account by the Federal Reserve bank: Provided further, That nothing in this or any other section of this act shall be construed as prohibiting a member or non-member bank from making reasonable charges, to be determined and regulated by the Federal Reserve Board, but in no case to exceed 10 cents per $100 or fraction thereof, based on the total of checks and drafts presented at any one time, for collection or payment of checks and drafts and remission therefor by exchange or otherwise; but no such charges shall be made against the Federal Reserve banks.

Analysis of the Proviso to Section 13, Federal Reserve Act.

All banks are authorized to make reasonable charges for:

(*a*) *Collection* of checks and drafts and remission therefor by exchange.

(*b*) *Collection* of checks and drafts and remission therefor otherwise.

(*c*) *Payment* of checks and drafts and remission therefor by exchange.

(*d*) *Payment* of checks and drafts and remission therefor otherwise.

BUT

"NO SUCH CHARGES"

"Shall be made against the Federal Reserve banks."

This prohibition is conceded to mean that the Federal Reserve banks *cannot pay any such charges for:*

(*a*) *Collection* of checks and drafts and remission therefor *by exchange.*

(*b*) *Collection* of checks and drafts and remission therefor *otherwise.*

(*c*) *Payment* of checks and drafts and remission therefor *by exchange.*

(*d*) *Payment* of checks and drafts and remission therefor *otherwise.*

The Federal Reserve banks invoke this prohibition against payment of such charges to any bank, although a non-member and a non-depositor, and therefore as much without jurisdiction as the express company or any private citizen, and propose to use some other means of collection "NO MATTER HOW EXPENSIVE,"

And Pay Any Cost to

(*a*) The express company
(*b*) The post-office
(*c*) Resident agents
(*d*) Special agents

} for {

The collection of checks and drafts and remission therefor by exchange or otherwise.

The prohibition in the law has no limitation as to the medium through which the charge is made, but is confined to the character of the charge itself, to wit:

Either

1st. For *collecting* checks and drafts and remission therefor by exchange or otherwise,

Or

2nd. For *paying* checks and drafts and remission therefor by exchange or otherwise.

It must follow that if a Federal Reserve bank can require the banks to "deadhead" these charges because it is forbidden to pay them, the Federal Reserve banks can, with equal propriety, require

the post-office, the express company, or any unfortunate private citizen whom it might threaten with "financial violence," to collect and remit for its checks without charge. *Reductio ad absurdum.*

Copy Letter Governor Harding to Honorable Carter Glass, May 10, 1917.

DEAR MR. GLASS:

Since you were in my office this afternoon, Mr. Delano tells me he just had a talk over the telephone with Governor Strong of the Federal Reserve Bank of New York. He calls attention to the possibility, if not strong probability, of the Government having to pay banks $1,000,000 exchange charges in connection with subscriptions to the Liberty loan, assuming that the Hardwick Amendment, which the House has instructed its conferees to agree to, becomes a law. This estimate is based on the assumption that one-half of the total issue of bonds will be placed outside of New York. Subscribers are permitted to make payment by their checks upon local banks properly certified, and under authority given by Congress many of these banks will undoubtedly avail themselves of the opportunity to charge one-tenth of 1 per cent. Should this exchange charge be applied to one-half of the subscriptions, the expense of the Government would be $1,000,000.

I would suggest, therefore, that you call attention of Senator Owen to this, and suggest that he *ask the Senate to reconsider the Hardwick Amendment with a view to changing it so as to prevent it from applying to transactions connected with Government bonds.* This I think would give you the opportunity that you desire to handle the matter in conference.

Yours very truly,

W. P. G. HARDING,
Governor Federal Reserve Board.

(*Congressional Record*, 65th Congress, page 3527.)

Letter of April 30, 1918, from Hon. T. W. Gregory, Attorney General, to Hon. W. P. G. Harding, Governor Federal Reserve Board.

APRIL 30, 1918.

MY DEAR GOVERNOR:

I acknowledge receipt of your letter of the 19th instant with reference to my opinion of March 21, 1918, holding that Federal Reserve banks are prohibited from paying the charges for collection and payment of checks and drafts mentioned in the first paragraph of section 13 of the Federal Reserve act.

In a memorandum by the general counsel of the American Bankers Association, which you inclose, the point is raised that the prohibition against the charges referred to must be confined to checks owned by the Federal Reserve bank as distinguished from checks deposited to be cleared or collected for the account of a member or depositor.

You ask to be advised whether the board correctly interprets my opinion as implying that no such distinction can be recognized and that no member bank can under any circumstances make any charge against its Federal Reserve bank in connection with the collection or payment of checks deposited with the Federal Reserve bank as provided in the paragraph mentioned.

The reason for the suggested distinction is not apparent. I do not understand why checks deposited with a Federal Reserve bank to be cleared or collected can not be considered as owned by the bank.

As the basis of the check-clearing system contemplated by the Federal Reserve act, the Federal Reserve banks are required by section 16 to "receive on deposit at par," unconditionally, the checks therein specified drawn on Federal Reserve and member banks. If the phrase "receive on deposit" is given its ordinary signification, it seems clear that the Federal Reserve bank becomes the owner of the checks so deposited, title to the checks passing to that bank and the depositors receiving immediate credit therefore. (Burton *v.* United States, 196 U. S., 283; Security National Bank *v.* Old National Bank, 241 Fed., 1, and cases therein cited at pages 10 to 12.)

The first paragraph of section 13, as amended to extend the clearing facilities of the Federal Reserve banks to non-member banks and to include checks generally, requires each non-member bank availing itself of these facilities to maintain with the "Federal Reserve bank of its district a balance sufficient to offset the items in transit held by the Federal Reserve bank." As so amended, the paragraph may be regarded as at least authorizing the Federal Reserve bank to receive on deposit from non-member depositors as well as from member banks all classes of checks to be cleared or collected, taking the title thereto and giving credit therefor to the depositing banks.

As a Federal Reserve bank may thus become the owner of all the checks cleared or collected through it, there appears to be no basis in the act for drawing a distinction between checks owned by the Federal Reserve bank and checks deposited with it to be cleared or collected.

But even if the checks received could be classified on the basis suggested, the language of the paragraph seems to preclude the idea of excluding checks deposited to be cleared or collected from the checks as to which charges are prohibited.

The charges which the Federal Reserve banks are prohibited from paying by the final clause, "no such charges shall be made against the Federal Reserve banks," obviously include the "charges * * * for collection or payment of checks and drafts and remission therefor by exchange or otherwise" mentioned in the preceding clause. The checks authorized by the paragraph to be deposited with the Federal Reserve bank, upon being received by that bank, are to be collected from and paid by the banks upon which they are drawn. To say that charges in connection with the payment of these checks made by the banks drawn upon and collected from the Federal Reserve bank are not made against that bank seems to do

violence to the ordinary meaning of the words used, regardless of whether the charges are ultimately borne by it or subsequently transferred to the banks by which the checks were deposited.

Moreover, the legislative history of the amendment as referred to in the opinion shows clearly that the prohibition was directed primarily against the making of charges in connection with the clearing of checks. It was a proposed amendment to the Federal Reserve act, which apparently contemplated "charging the Federal Reserve banks for payment of checks cleared by them" that the President opposed in his letter to Senator Owen. And it was to prevent the possibility of such charges being made that the final clause was added, which, as explained by Senator Owen, prevented "troubling the Reserve banks" or "interfering with the clearing of checks at par by the Reserve banks" (55 Cong. Rec., p. 3761).

I construe the first paragraph of section 13 as prohibiting member banks under any circumstances from making the charges therein referred to against Federal reserve banks.

You are accordingly advised that the interpretation placed by the board upon my opinion of March 21 is correct.

Respectfully,
(Signed) T. W. Gregory,
Attorney General.

Hon. W. P. G. Harding,
Governor Federal Reserve Board, Washington, D. C.
(7th Ann. Rep. F. R. Board, 350.)

Regulation "J."

Harding Exhibit No. 2.

(Tr., 330).

Federal Reserve Board.

Washington, *June* 22, 1917.

The Federal Reserve Board transmits herewith a new issue of its regulations of 1916 applicable to member banks. This revision was necessitated by the enactment of the recent amendments to the Federal Reserve Act.

Regulations C, H, and J, have been materially altered because of those amendments. Regulation D has been amended so as to include postal savings deposits in the definition of a "time deposit" as required by the recent amendment to section 19. Regulation G has been amended by adding a paragraph relating to the renewal of loans upon the security of real estate. Regulations A, B, E, F, and I are identically the same as last year.

Instructions which concern only Federal Reserve agents or Federal Reserve banks will be covered in separate letters or regulations as in the past.

W. P. G. Harding,
Governor.

H. Parker Willis, *Secretary.*

HARDING EXHIBIT No. 3.

(Tr., 331.)

Regulation J, Series of 1917 (*Superseding Regulation J of* 1916).

Check Clearing and Collection.

Section 16 of the Federal Reserve Act authorizes the Federal Reserve Board to require each Federal Reserve bank to exercise the function of a clearing-house for its member banks, and section 13 of the Federal Reserve Act, as amended by the act approved June 21, 1917, authorizes each Federal Reserve bank to receive from any non-member bank or trust company, solely for the purpose of exchange or of collection, deposits of current funds in lawful money, national bank notes, Federal Reserve notes, checks, and drafts payable upon presentation, or maturing notes and bills, provided such non-member bank or trust company maintains with its Federal Reserve bank a balance sufficient to offset the items in transit held for its account by the Federal Reserve bank.

In pursuance of the authority vested in it under these provisions of law, the Federal Reserve Board, desiring to afford both to the public and to the various banks of the country a direct, expeditious, and economical system of check collection and settlement of balances, has arranged to have each Federal Reserve bank exercise the functions of a clearing-house for such of its member banks as desire to avail themselves of its privileges and for such State banks and trust companies as may maintain with the Federal Reserve bank a balance sufficient to qualify it as a clearing member under the provisions of section 13.

Each Federal Reserve bank shall exercise the functions of a clearing-house under the following general terms and conditions:

(1) Each Federal Reserve bank will receive at par from its member banks and from non-member banks in its district which have become clearing members, checks drawn on all member and clearing member banks and on all other non-member banks which agree to remit at par through the Federal Reserve bank of their district.

(2) Each Federal Reserve bank will receive at par from other Federal Reserve banks and will receive at par from all member and clearing-member banks, regardless of their location, for the credit of their accounts with their respective Federal Reserve banks, checks drawn upon all member and clearing-member banks of its district and upon all other non-member banks of its district whose checks can be collected at par by the Federal Reserve bank. The Federal Reserve banks will prepare a par list of all non-member banks, to be revised from time to time, which will be furnished to member and clearing-member banks.

(3) Immediate credit entry upon receipt subject to final payment will be made for all such items upon the books of the Federal Reserve

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bank at full face value, but the proceeds will not be
of the minimum reserve nor become available to me
until actually collected, in accordance with the best
vailing.

(4) Checks received by a Federal Reserve bank
clearing-member banks will be forwarded direct to
will not be charged to their accounts until sufficient
within which to receive advice of payment.

(5) In the selection of collecting agents for ban
non-member banks, which have not become clearing
ber banks will be given the preference.

(6) Under this plan each Federal Reserve ban
par from its member and clearing-member banks ch
ber and clear-member banks and on all other no
whose checks can be collected at par by any Feder
Member and clearing-member banks will be require
Reserve Board to provide funds to cover at par al
from or for the account of their Federal Reserve
however, That a member or clearing-member ban
rency or specie from its own vaults at the expense
serve bank to cover any deficiency which may aris
only in the case of inability to provide items to offs
from or for the accounts of its Federal Reserve ban

(7) Section 19 of the Federal Reserve Act pro

The required balance carried by a member ban
Reserve bank may, under the regulations and subj
ties as may be prescribed by the Federal Reserve
against and withdrawn by such member bank fo
meeting existing liabilities: *Provided, however*, Th
at any time make new loans or shall pay any divi
until the total balance required by law is fully re

It is manifest that items in process of collection
be counted as part of the minimum reserve balance
a member bank with its Federal Reserve bank.
a member bank draw against such items the draft
against its reserve balance if such balance were suf
to pay it; but any resulting impairment of reserv
be subject to all the penalties provided by the ac

Inasmuch as it is essential that the law in res
tenance by member banks of the required minimu
shall be strictly complied with, the Federal Reserve
thority vested in it by section 19 of the act, hereby
penalty for any deficiency in reserves a sum equiv
est charge on the amount of the deficiency of 2 pe
above the ninety-day discount rate of the Federal
the district in which the member bank is located
serves the right to increase this penalty whenev
quire it.

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For the purpose of keeping their reserve balances intact member banks may at all times have recourse to the rediscount facilities offered by their respective Federal Reserve banks.

(8) Each Federal Reserve bank will determine by analysis the amounts of uncollected funds appearing on its books to the credit of each member bank. Such analysis will show the true status of the reserve held by the Federal Reserve bank for each member bank and will enable it to apply the penalty for impairment of reserve.

A schedule of the time required within which to collect checks will be furnished to each bank to enable it to determine the time at which any item sent to its Federal Reserve bank will be counted as reserve and become available to meet any checks drawn.

(9) In handling items for member and clearing-member banks, a Federal Reserve bank will act as agent only. The board will require that each member and clearing-member bank authorize its Federal Reserve bank to send checks for collection to banks on which checks are drawn, and, except for negligence, such Federal Reserve bank will assume no liability. Any further requirements that the board may deem necessary will be set forth by the Federal Reserve banks in their letters of instruction to their member and clearing-member banks. Each Federal Reserve bank will also promulgate rules and regulations governing the details of its operations as a clearing-house, such rules and regulations to be binding upon all member and non-member banks which are clearing through the Federal Reserve bank.

(10) The cost of collecting and clearing checks must necessarily be borne by the banks receiving the benefit and in proportion to the service rendered. An accurate account will be kept by each reserve bank of the cost of performing this service and the Federal Reserve Board will, by rule, fix the charge, at so much per item, which may be imposed for the service of clearing or collection rendered by the reserve bank, as provided in section 16 of the Federal Reserve Act.

Definitions and Illustrations.

An Illustration.

So much of the discussion of exchange charges as opposed to "par clearance" has been in technical terms, that some men have been more confused than enlightened thereby.

Let us take a typical case of the use of a check from the beginning to the end of the transaction of which it is a part, as prepared by an experienced banker.

Smith & Company, of Bartow, Georgia, are merchants. They are well rated and their business is desirable. They handle shoes among other things. Calling on them in an effort to get their business, are the salesmen of wholesale shoe dealers in many cities. Savannah, Atlanta, Richmond, Lynchburg, Boston and St. Louis and perhaps many other cities compete for their trade. Competi-

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tion is keen, but the Brown Shoe Company of St. Louis, for example, gets the business. They get an order for, say $2,000.00 worth of shoes. The terms and the discounts are agreed upon but not one word is said about the bill being payable in St. Louis, or in New York or St. Louis or any other particular kind of exchange. Competition for the orders of Smith is too keen for that. Probably the cash discount for payment within the specified time is as much as five per cent, so one-tenth of one per cent exchange is relatively too small a matter to make a point of; the Shoe Company has doubtless included this item of exchange in its "overhead" in computing its costs on the shoes, and bills it back to Smith in the invoice.

Smith does business with the Bartow Bank and his check on that bank is good and has always been readily accepted by all from whom he buys goods. If St. Louis should refuse to accept Smith's local check—Atlanta, Savannah, Richmond or Lynchburg will, and so competition forced St. Louis to do so. The one-eighth or one-tenth of one per cent exchange is insignificant compared with the amount of the bill or the profit to be made by the Shoe Company on the order.

So the Shoe Company says nothing about how the bill is to be paid, well knowing that Smith in accordance with universal custom in such cases will send his local check when the time comes to pay.

Smith, being a merchant in a country town, buys cotton. He has sold a shipment of cotton and drawn on the purchasing factor in Savannah with bill of lading attached to his draft. He deposits that draft in the Bartow Bank to his account and got immediate credit. The Bartow Bank sent the draft to its Savannah correspondent for presentation and collection and credit to its Savannah account; but several days elapse before the shipment of cotton reaches the port and the factors pays the draft. When it is paid the funds become available to the Bartow Bank but are in Savannah. In the meantime the Bartow Bank has "absorbed the float" and allowed Smith immediate use of the funds in Bartow. That is, the bank has advanced out of its own funds the amount of the draft and made it available to Smith before his draft was paid, and done it without charge.

Could any bank in good conscience be asked to do more for its customer?

Now in the meantime Smith's bill for $2,000.00 with the Brown Shoe Company has matured, and he has sent them his local check on Bartow to pay it, less the discount, as they knew he would when they sold him the shoes. That check is payable at the Bartow Bank and nowhere else. The Brown Shoe Company did not refuse the check and demand St. Louis exchange on the ground that the bill was due in St. Louis. They send him a receipt and thank him for his remittance and express the hope that they may be fortunate enough to get more of his business.

But the money to pay this check is in Bartow, and the Brown Shoe Company is in St. Louis. The check is merely an order

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pay at the bank in Bartow, and to be of any use to them its proceeds must be moved to St. Louis.

Up to this point the Bartow Bank has been no party to the shoe transaction—had no interest in it—knew nothing of it in fact. The Brown Shoe Company is not a customer of the Bartow Bank.

Still the fact remains that the check is in St. Louis and the money is in the bank at Bartow. To get this money the Brown Shoe Company must adopt one of two courses. It must go after the money or it must have it sent. The first is impractical, so the second is adopted. But this fact must be made clear and not lost sight of—the duty and burden of getting the money from Bartow to St. Louis is on the Shoe Company. So is the inseparable expense. The bank's duty is confined solely to paying the check at the bank when it is properly presented there.

How does the Brown Shoe Company go about obtaining this money?

It can send the check by mail to Bartow direct and ask that the proceeds be shipped to it by express in currency or that it be remitted in exchange. But that is the most expensive way. Even then, the bank is under no legal obligation to remit it. All it is obliged to do is to count out the money and lay it on the counter.

When you ask another to do a thing he is not obliged to do, it must be either as an accommodation or as a service for which you are willing to pay. It is optional with the party performing the service whether or not he will do it at all—and he may name the terms on which he will perform the service. You may reject the terms if you like, but you cannot accept the service and refuse to pay a reasonable price.

As the most convenient and economical method of collecting the check—that is getting the money or its equivalent from Bartow to St. Louis—the Shoe Company deposits the check with its bank so the bank will collect the check for them through the usual banking channels. The St. Louis bank then becomes the holder of the check. But it holds it in the capacity of collecting agent for the Brown Shoe Company. The check is still subject to the equities between the parties, and Smith can stop payment on the check in the hands of the bank just as he could while it was held by the Shoe Company. When the Shoe Company's rights in the check passed to the bank, so did its duties and obligations pass.

Checks are not money and never can be, for a check is merely an order, subject to cancellation—an executory contract—is not even an assignment of the funds in the bank, and requires presentation and payment to become complete, while the mere delivery of money finishes the transaction.

So we see that the St. Louis bank which now holds Smith's check is under the same duty to go and get the money from the Bartow Bank which the Shoe Company was. Now the St. Louis bank was paid by the Shoe Company for the service and expense of collecting Smith's check in one or both of the following ways:

The St. Louis bank either charged the Shoe Company a straight-out exchange charge, enough or more than enough to pay the ex-

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change to the Bartow Bank, or it gave the Shoe Company what is known as "deferred credit"—that is, it withheld the credit from the Shoe Company's account for four, five or seven days, until the check had been actually paid and the proceeds returned to St. Louis. Or the Shoe Company is required to keep a collected balance with the St. Louis bank, the value of the use of which to the St. Louis bank is sufficient to compensate them for the service and expense. As a matter of fact, the bank probably makes both of these requirements. The St. Louis bank knows how long it is going to take to collect this check and how much it is going to cost, and make their requirements of the Shoe Company accordingly. There can be no question but that the St. Louis bank collects for all the expense and service connected with the collection of the check. That is certain. Under the old plan it divided this with the remitting bank—under proposed "universal par clearance," it keeps it all—of course it favors the plan which makes this possible.

Nor is this an expense to the Shoe Company, because they have included this cost as a part of their overhead and included it in the cost of goods and billed it out in the invoice to Smith, and a part of Smith's own check covers this cost.

The St. Louis bank holding the check proceeds to collect it. That may be through any one of several banking channels. It may send it direct to the Bartow Bank for payment and remittance or it may send it to the same destination through its correspondents and intermediate banks. So far as the Bartow Bank is concerned the result is the same. It receives the check through the mails with request for payment and remittance. Now this remittance by the Bartow Bank takes the form of the bank's check on its correspondent either in the city from which the check was last sent, or upon some reserve city, acceptable to the collecting bank. In any event the Bartow Bank must do these several things which are outside and beyond its contract with Smith to pay the check at the bank:

It must make a record of the check and of where it was received from.

It must draw its own check or draft in settlement, on an expensive form.

It must record that draft on its books, either singly or as a part of a total, at least three and often five times.

It must write a letter and keep a copy of it, in which to endorse its own check, and describe the item.

It must furnish the form on which to write the letter.

It must furnish envelope and stamp and address the envelope.

It must furnish skilled clerical help to do this work, and finally it must have furnished the funds and maintained the account with a correspondent in a reserve city solely for the purpose of checking on it to pay such items.

Now who will say that all of this does not constitute a valuable and expensive service performed by the Bartow Bank? Who was it done for? For the holder of the check of course, and at his request certainly. Neither the last holder of the check, nor any previous holder thereof is a depositor in the Bartow Bank. They are

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strangers to the Bartow Bank. Why then should the attempt be made to force the Bartow Bank to bear the expense of this operation and do this work for strangers without compensation?

This is the heart of the par clearance controversy. The Bartow Bank and others in like situation deny that any authority has the right to force them to perform a valuable and expensive service against their will for this Shoe Company or any other stranger who by chance comes into possession of a check drawn on them. They maintain that the Shoe Company has no more right to demand this free service of them than their officers have to demand free shoes of the Shoe Company. Shoes are the Shoe Company's stock in trade—banking service is the bank's stock in trade, and there is no more equity in confiscating the one for private gain and benefit than the other. No class of institutions gives so much free service as banks, but surely they should be permitted to determine for themselves what services they shall donate and to whom. They are told that they should serve the foreign Shoe Company, which is not their customer, free, and recoup the loss by charging their customer, Smith, for what they do for the Shoe Company.

In other words penalize their customers, whose business supports the bank, for the benefit of the Shoe Company which is not and never will be a patron of the bank; and that the country banks so far have declined to do.

They decline to serve the cities at the expense of their own local communities—and there you have the heart of the par clearance controversy.

They do not believe Congress intended, in passing the Federal Reserve Act, to compel them to forego their rightful revenues and force them to render an expensive and valuable service to the customers of other banks free of charge.

Set-off or Reciprocal Service.

Frequently no direct exchange charge is made because the interchange of business amounts to a substantial set-off. The banks thus mutually related, nevertheless, receive value for the service as real as if a charge was exacted on each transaction. In the absence of such direct charge, banks thus conditioned are described as "remitting at par," and the places in which all the banks there located are so situated are designated "par points." When some of the banks in a place do not remit at par, the individual banks who do remit at par are scheduled on what is known as a "par list" of banks.

The conditions under which, by reason of substantially equalized interchange of business, compensation for the service of transmission of funds is effected through set-off rather than by direct charge, are dependent in large measure upon population of the respective cities, coupled with the amount of interchange of commerce or financial transactions between the respective communities involved. It results that this mutual interchange of business between large cities, especially when located in the same section of the country, is such that compensation by offset is almost universal. But the large num-

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ber of small banks in the rural and relatively sparsely settled districts cannot get a fair return for such service by interchange of business, because the flow of transactions is always inward rather than outward in such localities. Hence it has always been the rule to make specific charge for transmitting funds from such isolated districts to the outside world. This makes it necessary for these "country banks" to maintain balances in financial centers against which to draw to cover remittances, and these drafts are commonly called "exchange," and the charge for the service of remittance has come to be called an exchange charge, though it will be readily seen that the consideration for the charge is the transfer of actual money from one place to another. In order to obtain these exchange deposits and in part payment for the use of the funds thus deposited with them, the city banks collect checks on other banks, whether on par points or not, without charge. This reduces the costs to the country banks of keeping funds at the financial centers as media of exchange and correspondingly increases their profit on exchange charges. So that the compensation received by these country banks for the service of remitting funds has long been an important source of revenue to them, the loss of which would seriously embarrass many of them and render it impossible for many others to make a living, and drive them out of business.

Since these rural communities draw on the outside world for many of the necessities and most of the luxuries of life, payment for which is commonly made through the medium of bank checks rather than in currency, a large percentage of such checks find their way into the hands of the dealers in such commodities. These dealers include the merchants and manufacturers throughout the country who make claims (somewhat extravagant) that they constitute "the commerce" of the country. They seem to have convinced the Federal Reserve Board and banks of the soundness of this claim. We pause to reflect, however, that their "commerce" would rapidly dwindle to the vanishing point did the overburdened "common people" out in the highways and hedges cease buying their wares.

Upon receipt of one of these checks on a country bank, a large percentage of which represents the dealer's profit on the transaction the check covers, the payee deposits it in usual course of business with his city bank (and the aggregate of these checks makes large deposit accounts much sought after by the big city banks, who in turn have to carry their reserves with the Federal Reserve banks), but unless drawn on a bank remitting at par, the dealer's bank deducts exchange charges, which are absorbed in the cost and expense accounts of the dealer. Although the exchange charge is infinitesimal in comparison with the profit on a transaction of any magnitude, the wealthy merchants and manufacturers, whose deposits are much sought after, have convinced the Federal Reserve Board, apparently, that the exchange charge is a burden on "commerce," and some of their subalterns have gone so far as to call it "a vice that must be eradicated."

Since these charges are as legitimate as those made by the express companies or the post-office; or as freight, cartage and transportation of all kinds, it is difficult to see why one should be denominated a

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vicious burden on commerce more than another. Why should the country bank serve without pay any more than the express company, the post-office or the railroad, even though the service is demanded by and rendered to a Federal Reserve bank?

Clearing-house Functions.

Exhibit "A" (App. 18), which is a formal and official letter from the Federal Reserve Board, and Exhibit "B" (App. 20), which is a formal and official letter and declaration from and by the defendant bank, through its governor, each announces a purpose on the part of the Federal Reserve banks, including the defendant bank, to begin to accept checks drawn upon non-member banks and to compel payment thereof at par by the drawees.

The defendant bank undertakes no explanation of the reason for such action, except the general announcement that justice to the member banks and non-member banks who maintain clearing accounts with the Federal banks, and to the various other banks who are remitting at par, requires the defendant bank, in compliance with the intent of the Federal Reserve Act, to begin receiving at par checks and drafts payable on presentation drawn on any bank in the United States, and follows this with a threat to the effect that if par remittance is not consented to, the defendant bank will adopt other methods of collection that will prove "embarrassing, annoying and expensive" to the bank or banks so refusing. However, with each of the letters last mentioned there was enclosed a copy of the letter from the Federal Reserve Board, which is Exhibit "A" to the bill, and therein we find an attempted explanation of the purposes of, and authority and reasons for, the threatened action.

In the last-mentioned letter, the Federal Reserve Board, after calling attention to that part of section 16 which authorizes it, at its discretion, to exercise the functions of a clearing house for the Federal Reserve banks, and to require each Federal Reserve bank to exercise the functions of a clearing house for its member banks, says:

"In accordance with the purpose of this paragraph, the Federal Reserve Board, with the view ultimately of establishing a universal or national system of clearing intersectional balances as well as bank checks and drafts, has established a gold settlement fund through which daily clearings between all Federal Reserve banks are consummated and has also required each Federal Reserve bank to exercise the functions of a clearing house for its member banks. In order, however, to make fully effective its facilities as a clearing house in accordance with the terms of this section, there does not seem to be any doubt that the Federal Reserve bank should not only exercise its obligatory power to receive from member banks checks and drafts upon other member banks, but that it should also exercise its permissive power to receive from member banks any other checks and drafts upon whomsoever drawn, provided that they are payable upon presentation."

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This means that the Federal Reserve Board has construed the statutory permission granted to it to exercise the functions of a clearing house for Federal Reserve banks, and to require each Federal Reserve bank to exercise the functions of a clearing house for its members, as authority to it to establish "a universal or national system" of bank clearing, and therein to dictate and control that feature of the business of all banks, including non-member banks. In short, from a mere statutory permission to establish a clearing-house system for Federal Reserve banks and their members, the Federal Reserve Board deduces and claims authority to control and direct the entire subject of bank clearance in this country, and therein to dictate as to how banks with which it has no connection whatever will carry on a very important feature of their business.

That the statute relied upon does not even remotely suggest authority for such claim and the threatened action based thereon is manifest. The term "clearing house" has a well-defined meaning, which is the same both in law and in the banking business, and about which there is no uncertainty or question.

"A clearing house is an association, the object of which is to effect at one time and place the daily exchanges between the several banks which are members, and the payment of the balance resulting from such exchanges."

National Exchange Bank vs. National Bank of North America, 132 Mass., 149.

Philer vs. Patterson, 168 Penn., 468 (32 Atl., 26).

Crane vs. Fourth Street National Bank, 123 Penn., 556 (26 Atl., 269).

In the very nature of the term it embraces, or applies to only the members of the organization which it designates. The basic idea is an association through which the members thereof make daily settlements each with the other. Congress is presumed to have been cognizant of these well-known matters and to have legislated with that information in mind. The term "clearing-house functions," being free from ambiguity and of well-known meaning, the only effect of the statutory provision under discussion is to authorize the Federal Reserve Board to act as a clearing house, the members of which shall be the Federal Reserve banks, and to require each Federal Reserve bank to act as a clearing house, the members of which shall be its member banks, and under every definition of the term "clearing house," the powers of these several organizations would be limited to the making of daily settlements between the members thereof, and could not embrace any control over settlements or adjustments between member banks and non-member banks.

The jurisdiction, powers and functions of a clearing house so organized can differ in no respect from the jurisdiction, powers and functions of a clearing house organized by agreement between the banks of a particular city, and we do not think that it has ever before been suggested that any clearing house had the slightest thing to do with transactions by its respective members with non-members

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In short, the functions of a clearing house are limited to settlements between its members, and it is in no wise concerned with what may be owing to or by any member by or to any party who is not a member. Unquestionably, the Federal Reserve Board has the power to make daily settlements between the Federal Reserve banks, and each Federal Reserve bank has the power to make daily settlements between its member banks, but here all clearing-house functions cease and no Federal Reserve bank should be concerned, or take action, or seek to exert any control, with respect to the liabilities existing between its member banks and those who are not members.

This effort on the part of the Federal Reserve Board to deduce from a statute clearly limited to granting power to establish a system of clearing for Federal Reserve banks and their members authority to establish "a universal or national system of clearing" is a most forcible illustration of that autocratic tendency which seems to be the order of the day.

Whole Scheme Impracticable.

The whole scheme of the Federal Reserve system on the subject of par clearance is arbitrary, artificial and impracticable. If they accomplish all they claim, the people at large would not be benefited the value of a postage stamp. Exchange would still be charged under one name or another, and the price of no single commodity in the United States would be lowered one penny if every bank in the United States was compelled to submit to the dictation of the Federal Reserve Board and concentrate all the banking resources of the United States in the Federal Reserve system. There is no general economic problem involved. The whole controversy revolves around the selection of the beneficiaries of the system. The beneficiaries would be the large banks in large financial centers and particularly those happening to be located where there is a Federal Reserve bank or a branch thereof. The injury would be distributed widespread throughout the agricultural districts of the United States, and rest upon the shoulders of the small institutions that have not, and cannot have, sufficient capital requirements to become members of the Federal Reserve system even if they wanted to.

Banking Statistics.

(*Excluding in All the Ensuing Figures the Data as to the Mutual Savings and Private Banks*) *as of June* 30, 1921

In order to graphically demonstrate that the present campaign amounts to unjustifiable and destructive warfare against some 10,000 small State banks that are, by reason of the limited capital upon which they operate, forever debarred from membership in the Federal Reserve system, the following statistics as to the banks and banking resources of the United States, taken from the Eighth Annual Report of the Federal Reserve Board for the Year 1921, are referred to.

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The combined resources of all banks in the United States was $42,568,225,000. The total number of these banks was 29,477. Of these, 8,150 were national banks, having $19,630,124,000 aggregate resources or 46 1/10 per cent of the whole. The balance of $22,938,101,000 (53 9/10 per cent) was distributed among 21,32[illegible] State banks.

On that date all of the 8,150 national banks and 1,595 of the State banks were members of the Federal Reserve system. These 1,595 State banks constituted 16.4 per cent of the whole membership, but held $10,009,135,000 of resources, or an average of $6,275,320 each. This shows that only the largest State institutions joined the system. The average resources of the national banks at that time were only $2,408,604 or 38⅜ per cent of the average of State bank members of the Federal Reserve system.

Of the 21,327 State banks, 10,092 (more than one-half) are ineligible for membership in the Federal Reserve system because their capital stock is below the minimum requirements of the Federal Reserve Act.

The total number of eligible State banks is 9,640, of which only 1,595 have joined (16.4 per cent), but this number represents more than 52½ per cent of the combined resources of all eligible State banks.

The average resources of the ineligible State banks is only one-eighth of the general average resources of all member banks and six and one-tenth per cent of the average resources of State banks that have joined the system. In other words, the average resources of the State bank members are sixteen times greater than the average resources of the ineligible State banks.

There are 9,640 eligible State banks that remain out of the Federal Reserve system, being 85 8/10 per cent of all eligibles and having $9,034,347,000 aggregate resources, or an average of $937,17[illegible] each, which is only 12½ per cent below the general average resources of all the State banks in the country.

The general average resources of all member banks in the system is $3,041,484, while the general average resources of national banks is only $2,408,604 (about 21 per cent below the general average). The State bank members have average resources more than twice as great as the general average resources of all members and 2.6 times larger than the general average resources of national banks.

The average resources of national banks are 2.57 times larger than those of eligible non-members and 6¼ times larger than those of ineligible State banks.

The average resources of State bank members are nearly seven times greater than those of eligible non-members and nearly 16 times larger than those of ineligible State banks.

The general average resources of all member banks are 3¼ times larger than those of eligible non-members and nearly eight times larger than those of ineligible State banks.

The following generalizations are deducible from the foregoing statistics:

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1st. The machinery of the Federal Reserve system is not adjustable to the small bank.

2d. The benefits of the system are all on the side of the large institutions and the disadvantages to the small banks are so great as to amount to prohibition.

3d. The disproportion between the relatively small number of banks in the system and their relatively large resources, as compared with the relatively large number of banks outside the system (more than one-half of which are ineligible) and their relatively small resources, shifts the greatest part of the burden and expense of par remittance upon the small banks in the country, and bestows practically all the benefits and advantages of universal par clearance on the large banks in the city.

Unless the continuation of enforced par clearance, brought about by coercive measures throughout the United States, is overturned by injunctive processes of the courts, these 10,092 ineligible State banks will be driven out of business altogether, or, in company with 9,640 other non-member banks, will be doomed to involuntary servitude to the large city banks, constituting the backbone of the Federal Reserve system. However ambitious the Federal Reserve Board may be to draw into the Federal Reserve banks practically all of the banking resources of the United States, such a result could not be reconciled with the constitutional limitations of the power of Congress over State banking institutions. The effort to so concentrate all of the banking resources, whether State or national, into the Federal Reserve system is a plain and inexcusable usurpation of power. If we are to be guided by the lamp of experience and the teachings of history, as related to the Government of the people of the United States, no such usurpation can ultimately succeed, and the instrumentality that attempts it is doomed to certain failure and destruction.

IN THE SUPREME COURT OF THE UNITED STATES.

No. 717.

AMERICAN BANK AND TRUST COMPANY ET AL.

vs.

FEDERAL RESERVE BANK OF ATLANTA ET AL.

It is hereby stipulated by the solicitors of the appellants and appellees in the above stated case that the serving and filing of briefs therein, in accordance with Rule 21, are hereby waived and said briefs may be filed and served at any time before argument under the order advancing said case for assignment on April 23, 1923.

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This 27th day of March, 1923.

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NOTE.—The foregoing data has been assembled in this Appendix and bound up with the brief and argument in one document for convenience of reference by the Justices, and to prevent interruption of the continuity of the argument of counsel.

A. W. S.

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